

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Case No. 18-cv-00981-CMA-MEH

4 HEIDI GILBERT, et al.,

5 Plaintiffs,
6 vs.

7 UNITED STATES OLYMPIC COMMITTEE, et al.,

8 Defendants.

9
10 Proceedings before MICHAEL E. HEGARTY, United
11 States Magistrate Judge, United States District Court for the
12 District of Colorado, commencing at 1:33 p.m., January 23,
13 2019, in the United States Courthouse, Denver, Colorado.

14
15 WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS
16 ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED. . .

17
18 APPEARANCES

19 JONATHAN LITTLE, LARKIN WALSH, RYAN HUDSON, SARAH
20 BRADSHAW and DANIEL LIPMAN, Attorneys at Law for the
21 Plaintiffs.

22 LINDSEY BARNHART, MITCHELL KAMIN, LILLIAN ALVES,
23 THOMAS QUINN, SEAN CONNELLY, JOSH MARKS and KATHLEEN ALT,
24 Attorneys at Law, appearing for the Defendants.

25 MOTION HEARING

1 P R O C E E D I N G S

2 (Whereupon, the within electronically recorded
3 proceedings are herein transcribed, pursuant to order of
4 counsel.)

5 THE COURT: Case Number 18-cv-981, Gilbert vs.
6 USOC, et al. Appearances, please.

7 MR. LIPMAN: Good afternoon, Your Honor. Dan
8 Lipman for the plaintiff, John Little for the plaintiff, Ryan
9 Hudson for the plaintiff, Larkin Walsh for the plaintiff and
10 also Sarah Bradshaw on the telephone for the plaintiff.

11 THE COURT: Very good. Good afternoon to all of
12 you.

13 MR. KAMIN: Good afternoon, Your Honor. Mitch
14 Kamin for the United States Olympic Committee. Also Lindsey
15 Barnhart for the Olympic Committee.

16 THE COURT: USOC.

17 MR. QUINN: Tom Quinn and Lillian Alves on behalf
18 of USAT.

19 THE COURT: Okay, good afternoon.

20 MS. ALT: Good afternoon, Your Honor. Kathleen Alt
21 and Josh Marks on behalf of the Lopez brothers.

22 THE COURT: Very good.

23 MR. CONNELLY: Your Honor, Sean Connelly on behalf
24 of US Center for SafeSport.

25 THE COURT: Okay. So let me go over that again.

1 USOC was Mr. Kamin?

2 MR. KAMIN: Yes.

3 THE COURT: And who else?

4 MR. KAMIN: Lindsey Barnhart.

5 THE COURT: Okay. Ms. Alves is with Mr. Quinn.

6 Okay, great. All right. Whatever order you guys prefer I'm
7 fine with. So we don't have any time limit other than
8 midnight to avoid the pumpkin thing, so let's -- let's get
9 started.

10 MR. KAMIN: Great, thank you, Your Honor. Mitch
11 Kamin for the United States Olympic Committee. Thank you for
12 granting our motion for oral argument. I won't go through
13 all of the grounds for dismissal. That would keep us here
14 until 3:00 in the morning rather than just midnight, but I do
15 want to focus on the federal claims that are alleged against
16 the Olympic Committee under the Trafficking Victims
17 Protection Act and RICO. Before I get to that, though, I
18 think it's important to explain some context as far as the
19 Olympic Committee and the role of the United States Olympic
20 Committee.

21 You will see throughout the second amended
22 complaint and also in the response to the motions there is a
23 great deal of what we regard as group pleading where a
24 sentence will begin: The USOC and USAT did something.
25 That's permissible, but it's also inaccurate.

1 And when you review again the second amended
2 complaint, you will see that the allegations made clear that
3 the role between the USOC and its NGB USAT are very
4 different. Under the Amateur Sports Act, NGBs run
5 independently with their own staff, their own board, their
6 own members and their own athletes. The amended complaint
7 acknowledges this. It does not allege that the USOC
8 exercises direct control over athletes and coaches. It says
9 that the USOC can influence an NGB by putting it on
10 probation, cutting funding, making it replace its order,
11 moving to decertify it.

12 The amended complaint -- and I'll just refer to it
13 as the complaint if that's okay, Your Honor.

14 THE COURT: It is.

15 MR. KAMIN: Okay, great. And the USOC does not
16 select athletes or coaches for the National Team or the
17 Olympics, that's the job of the NGB, and every four years the
18 USOC is asked to approve those choices, but that only happens
19 on the year when there is Olympic Games.

20 THE COURT: So, I'm sorry, I appreciate everything
21 you just said and understand it. Does the USOC have the
22 authority to veto any athlete at the end of each of those
23 four years?

24 MR. KAMIN: When a delegation is proposed for the
25 Olympic Games, that delegation, which includes athletes,

1 coaches and other staff, can be approved or disapproved by
2 the USOC at that time.

3 THE COURT: Is there a disapproval process or is it
4 just discretionary and is there an appeal available?

5 MR. KAMIN: I -- I believe that under the Amateur
6 Sports Act there are criteria that are supposed to be
7 employed by the USOC. I do not know whether it's appealable.

8 THE COURT: Okay.

9 MR. KAMIN: And in this case, Your Honor, I would
10 point out that that process was never undertaken with regard
11 to these plaintiffs. They were not presented as members --
12 proposed members of the Olympic Team. They were participants
13 in USA Taekwondo's activities and competitions, but they were
14 never up for -- for approval by the USOC.

15 The defendant Lopez brothers were certified -- I
16 don't think it's that right word, but they were approved for
17 participation in the Olympic Games.

18 THE COURT: So outside of that, once every four
19 years when apparently USOC is presented a list of athletes
20 and coaches and officials that will be attending, and that's
21 when this process kicks in?

22 MR. KAMIN: Right.

23 THE COURT: Outside of that, what formal process is
24 there, or informal, for that matter, to investigate or
25 discipline or in any way influence decisions made by NGB?

1 MR. KAMIN: Well, are we talking about the time
2 period alleged in the complaint from its earliest allegation?

3 THE COURT: So it has changed?

4 MR. KAMIN: It has -- it has changed somewhat over
5 time, Your Honor.

6 THE COURT: Okay. So the time period implicated in
7 the complaint.

8 MR. KAMIN: For the time period starting back when
9 the first allegations of abuse arose, the USOC did generally
10 have authority to do the sorts of things alleged by the
11 plaintiffs, to put an NGB on probation, to have discussions
12 with it regarding its funding, to moving for decertification.
13 The USOC cannot independently decertify an NGB once it is
14 certified. That's a process that is handled by an
15 independent panel and the USOC must make that motion.

16 THE COURT: Okay. So besides decertifying, is
17 there a process -- was there a process in place for the
18 disciplining and suspending and things like that, other than
19 decertifying?

20 MR. KAMIN: Typically that was handled by the NGBs.
21 There were 50 of them, Your Honor.

22 THE COURT: Right.

23 MR. KAMIN: There were 47 at the time.

24 THE COURT: Okay.

25 MR. KAMIN: And so those sorts of -- the complaints

1 of the sort alleged in this case from the late, you know,
2 2006, 2007 timeframe would be investigated by the NGBs, and
3 that's what happened.

4 THE COURT: You said typically, though, but was
5 there authority within the USOC to reach out on its own
6 through whatever notice it might have or inclination to reach
7 out to an NGB and say, We're suspending you or whatever, some
8 kind of discipline? And if there was, was there a process or
9 was it simply up to the discretion of the USOC?

10 MR. KAMIN: Well, the management of the day-to-day
11 affairs of the NGBs is reserved to the NGBs.

12 THE COURT: Understood.

13 MR. KAMIN: And so those sorts of disciplinary
14 processes would also be reserved to the NGBs.

15 THE COURT: Understood.

16 MR. KAMIN: Whether -- I do not believe the Olympic
17 Committee would have the independent authority to insert
18 itself into such a proceeding, nor is that alleged in this
19 case --

20 THE COURT: Very good, thank you.

21 MR. KAMIN: -- Your Honor.

22 So the reason I point out these differing roles is
23 because it's particularly critical for these federal causes
24 of action where there is a requirement of knowledge,
25 participation and benefit, which can't simply be inferred

1 because of a relationship between the USOC and the NGBs.

2 THE COURT: I understand and I agree.

3 MR. KAMIN: So turning now specifically to the
4 allegations of trafficking or forced labor against the USOC.
5 As Your Honor saw, there were four such counts against the
6 USOC in the complaint. Two of the plaintiffs have conceded
7 should be dismissed and we agree. That would be Count 11 for
8 child sex trafficking and child -- Count 12 for benefiting
9 from child sex trafficking. So we would ask that the Court
10 dismiss those claims against the Olympic Committee. That
11 leaves Counts 9 and 14, which I'll talk about in turn.

12 Count 9 is under the TVPA. It's for forced labor.
13 It's brought by plaintiff Amber Means, and solely by
14 plaintiff Amber Means, which means that the analysis of
15 whether the claim is asserted properly must be limited to
16 allegations as to her.

17 There are two separate grounds. One would be
18 aiding and abetting; that the plaintiffs have conceded that
19 is not a legitimate ground for this. So we're left with
20 knowingly benefiting from the alleged forced labor. This is
21 under 18 U.S.C. 1595(a) and the case -- that statute and the
22 cases interpreting it make clear that independent of the
23 alleged forced labor itself, which in this case is alleged to
24 be the acts of the Lopez brothers, that a defendant being
25 held secondarily liable, like the USOC, must have actual

1 knowledge, actual participation and actual benefit.

2 And so to the extent Your Honor wants to address
3 the threshold issue of whether the conduct alleged
4 constitutes forced labor, we understand that the plaintiffs
5 and amici do advocate for a broad definition and have asked
6 that forcing athletes to provide sexual services in order to
7 participate in sport does qualify as forced labor under
8 1589(a).

9 THE COURT: Was it forced labor, the term we're
10 dealing with, or services?

11 MR. KAMIN: I won't speak for them, but I
12 understood it to mean forced labor. And the conduct at issue
13 that they allege violates the statute is the sexual abuse,
14 which was a -- you know, they allege a prerequisite for
15 participating in the sport.

16 From our perspective, Your Honor, there has not
17 been a case that has characterized forced labor or services
18 in that way, but for USOC's purposes you need not reach that
19 issue. And even assuming that activity does constitute
20 forced labor, the other three elements have not been
21 demonstrated as to the USOC. I want to talk --

22 THE COURT: What do you believe -- what is your
23 position as to the actual knowledge what has been alleged?

24 MR. KAMIN: As to actual knowledge --

25 THE COURT: Actual knowledge.

1 MR. KAMIN: -- of Amber Means' complaints?

2 THE COURT: Yeah, by the USOC, actual knowledge.
3 You said that was a mandatory element.

4 MR. KAMIN: It is a mandatory element.

5 THE COURT: What is your allegation?

6 MR. KAMIN: So as to knowledge, Your Honor, the
7 amended complaint alleges abusive sexual acts against Amber
8 Means from 2007 to 2013. There was no allegation in the
9 complaint that the USOC had knowledge at that time or was
10 informed at any time prior to 2014 when the USA Taekwondo
11 investigator responded to complaints. There is an allegation
12 that in 2015 USOC became aware of that.

13 There is no allegation that the abuse itself, which
14 again 2007 to 2013, occurred with anyone from the USOC
15 present or that the USOC had any way to know about it at that
16 time, so there was no contemporaneous knowledge whatsoever.
17 And the first notice was when Alperstein for the USAT
18 investigated in 2015. That's what's alleged in the
19 complaint.

20 THE COURT: Well, I don't think the argument is had
21 a way to know about it. I thought allegations of this nature
22 surfaced as early as in the mid-2000s.

23 MR. KAMIN: Yes.

24 THE COURT: So there was a possible way to know
25 about it, you just didn't?

1 MR. KAMIN: Well, there -- what the complaint
2 alleges is that in 2006 another plaintiff, Mandy Meloon, made
3 a complaint to USAT and to USOC.

4 THE COURT: A complaint to USOC also?

5 MR. KAMIN: That's what's alleged.

6 THE COURT: Okay.

7 MR. KAMIN: And obviously I'm accepting as true
8 what's in the complaint --

9 THE COURT: Which we have to.

10 MR. KAMIN: -- even though we take issue.

11 THE COURT: Right. Well pled. Okay, go ahead.

12 MR. KAMIN: So the allegation is that at that time
13 USAT undertook some sort of action and response to that
14 complaint, it's not clear what that was, and there was a
15 subsequent arbitration, which had to do with Ms. Meloon's
16 suspension from USAT's team. So there is an allegation that
17 at that time USOC knew of a complaint against the Lopez
18 brothers.

19 THE COURT: Well, you said there was an
20 arbitration.

21 MR. KAMIN: There was an arbitration concerning
22 Ms. Meloon's suspension from USAT's team as far as I know.

23 THE COURT: But the arbitration had to include a
24 process?

25 MR. KAMIN: Yes.

1 THE COURT: And a record?

2 MR. KAMIN: I assume so. I have not seen that
3 record, Your Honor.

4 THE COURT: Where is the record?

5 UNIDENTIFIED SPEAKER: (Inaudible).

6 THE COURT: The record is on the U.S --

7 UNIDENTIFIED SPEAKER: (Inaudible).

8 THE COURT: Now, but there would have been an
9 underlying order.

10 MR. KAMIN: Yeah, the decision was seen, but the
11 record itself, I don't -- I don't know.

12 THE COURT: I just wonder whether the decision or
13 anything in the record indicated anything of this nature
14 beyond that one claimant.

15 MR. KAMIN: Our understanding is that the
16 arbitration concerned Ms. Meloon's suspension from the sport.

17 THE COURT: Understood, but did the discussion or
18 anything within that arbitration give any notice of an
19 allegation of inappropriate sexual behavior?

20 MR. KAMIN: I don't have an answer for Your Honor,
21 I don't know.

22 THE COURT: Okay.

23 MR. KAMIN: So, but if you look at the cases
24 interpreting knowingly benefit -- liability for knowingly
25 benefiting from forced labor or services, it's clear that

1 knowledge of other allegations of abuse involving other
2 parties will not suffice. And I'm referring specifically to
3 the Noble case, which is out of the Southern District of New
4 York. It involved someone whose name we've all heard, Harvey
5 Weinstein. He was alleged to have raped the plaintiff at the
6 CON Film Festival, and the plaintiff sued him for direct
7 violations of the TVPA, and she also sued his brother Bob
8 Weinstein, who was his partner in Miramax Film Company,
9 alleging that Bob Weinstein was liable for knowingly
10 benefiting because he arranged Harvey's travel to CON, he
11 benefited from Harvey's benefits in CON because they were
12 co-owners of this company, and also that he had participated
13 in prior settlements. And the Southern District dismissed
14 that complaint, Your Honor, finding it was not adequate, did
15 not demonstrate knowledge, participation or benefit on the
16 (inaudible).

17 THE COURT: Was that appealed?

18 MR. KAMIN: I don't believe it was appealed. I
19 believe it stands.

20 THE COURT: All right.

21 MR. KAMIN: So -- and that -- the level of conduct
22 required here, Your Honor, given the severity of these
23 allegations, and we're talking about forced services and
24 labor, and we don't dismiss the severity of the allegations
25 concerning the abuse, they are very serious, but the cases

1 require much more than is demonstrated here, and that's true
2 across the board. There is the Afare (ph) case from the
3 Sixth Circuit which concerns trafficking, but trafficking and
4 forced labor have exactly the same standard for knowingly
5 benefiting under the TVPA.

6 And in that case the Court considered a
7 hypothetical that I would commend Your Honor to look at
8 closely. It concerned kind of a crazy scenario, but a
9 defendant who was alleged to have knowingly participated by
10 virtue of playing on a soccer team -- and, again, it's the
11 Court's hypothetical. This is not the facts of the case,
12 it's a hypothetical -- but playing on a soccer team with sex
13 traffickers who told the defendant, We are sex traffickers.
14 We're using our money to fund your team, we're paying for
15 your travel, we're paying for your uniforms, and the Court
16 was clear that that would not be enough to show knowing
17 benefit under the TVPA.

18 THE COURT: Knowing benefit as to another team
19 member?

20 MR. KAMIN: Correct, correct.

21 THE COURT: Okay.

22 MR. KAMIN: And so there has to be some overt act
23 on the part of a defendant accused of knowingly benefiting.
24 And the Court says explicitly they would require the
25 defendant actually participate and commit some overt act that

1 furthers the sex trafficking aspect of the venture.

2 THE COURT: You believe that there has been no
3 overt act alleged here?

4 MR. KAMIN: In terms of the USOC allegedly directly
5 participating in the forced labor claims brought by this
6 plaintiff, correct, there was no knowledge of these
7 particular --

8 THE COURT: No, no, the allegations, you don't
9 think an overt act has been alleged?

10 MR. KAMIN: Correct, correct.

11 THE COURT: Okay.

12 MR. KAMIN: Nor has there been alleged, Your Honor,
13 knowing benefit from this activity. The cases here also make
14 clear that there has to be a direct benefit from the
15 trafficking, and there is a case -- sorry, you're helping me
16 skip around a bit, which I appreciate -- out of the First
17 Circuit, Richio (ph), and this involved a case where the
18 owners of a motel allowed a pimp to stay in a room there
19 where he had a sex slave. And there had been evidence of
20 prior dealings between the hotel -- motel owners and the
21 pimp, and they witnessed the pimp's abusive treatment of the
22 plaintiff as a sex slave. They ignored her plea for help in
23 trying to escape. They saw her in the room and ignored her
24 obvious physical deterioration and the pimp also kicked the
25 plaintiff in plain view and forced her back into the room.

1 So that's the sort of direct benefit. They rented a room to
2 a known pimp who was keeping a woman hostage and they
3 received money from that. That's the sort of direct
4 participation that's required.

5 THE COURT: How would you -- how would you phrase
6 the purpose or mission of the USOC?

7 MR. KAMIN: I should probably read its mission
8 statement. I would do it injustice by trying to paraphrase
9 it, but it has a mission statement, and it's to support
10 athletes and the Olympic community in ensuring -- in, you
11 know, fostering -- fostering the Olympic community and the
12 athlete's participation in it. I can't -- I'm sorry that was
13 a poor job.

14 THE COURT: Well, to put our best product on the
15 field possibly also?

16 MR. KAMIN: I don't know that that's a part of the
17 mission statement, Your Honor. Clearly it was a priority of
18 the Olympic Committee to have success.

19 THE COURT: Okay, but so to the extent that
20 whatever happened resulted in better athletes being part of
21 one of these NGBs, even if not participants in the Olympics
22 and those better athletes made the actual Olympic athletes
23 better by the practices and competitions, isn't that a
24 benefit, a direct benefit?

25 MR. KAMIN: I don't believe it's a direct benefit,

1 Your Honor, because the cases require something directly
2 stemming from the forced labor itself. There certainly is
3 incidental benefit from athletes' success. And, you know,
4 obviously the plaintiffs make much of, you know, the claim
5 for medals and money, but the statute requires direct
6 benefits, like the money from the pimp's room rental. There
7 is a case involving KBR as a government contractor in Iraq
8 where they used traffic workers and they knew and they told
9 the guy he couldn't leave, and they benefited from reduced
10 labor costs.

11 And I think that the Afare case from the Sixth
12 Circuit and the hypothetical is, you know, kind of crazy as
13 it is, it makes the point that the incidental benefit of the
14 trafficking, even when the soccer team knew about it, that
15 the trafficker said, I'm using trafficking money to pay for
16 your uniforms and your travel, that was not enough.

17 So it is a high standard, Your Honor, because this
18 is a very, very serious charge, and it should only be
19 sustained if the direct knowledge, direct benefit and direct
20 participation can be sustained, which they cannot be under
21 the complaint.

22 There is also a statute of limitations issue here,
23 Your Honor, which is brief, but just very briefly.
24 Plaintiffs do concede that 1595(a) doesn't apply to any
25 conduct before December 23, 2008, and as regards to the USOC

1 and to Your Honor's point earlier, the conduct that's alleged
2 in terms of knowledge predates December 23, 2008. The only
3 conduct alleged afterward in support of this cause of action
4 is that Jean Lopez disqualified Ms. Means from a non-USOC
5 tournament in 2010 and that Steven assaulted her in 2013 at a
6 private party after she retired from the sport. So no
7 connection to the USOC. Everything allegedly connected to
8 the USOC predates the statute.

9 I'm sorry, I misstated. It's not the statute.
10 That's when the amendment became effective, so there is no
11 retroactive application.

12 Okay, so I'll move on to the obstruction count,
13 Your Honor. This is brought by all plaintiffs. The
14 plaintiffs do not challenge that this cannot be asserted
15 under Masha's law, which is 2255, so again we're just talking
16 about the TVPA. And the TVPA 1590(a) -- and I apologize for
17 my -- if I'm breathing heavily. I'm still getting used to
18 the altitude. I'm from sea level.

19 THE COURT: When did you get --

20 MR. KAMIN: So you guys all have an advantage on
21 me.

22 THE COURT: When did you get here?

23 MR. KAMIN: Last night.

24 THE COURT: Okay. It usually hits you about two
25 days in and then be careful.

1 MR. KAMIN: Well, it's hitting me about 24 hours.

2 THE COURT: You can certainly get a glass of water.
3 If we don't have some, we'll get you some.

4 MR. KAMIN: I do, I do, and I'm okay. I, you know,
5 just wanted to note that I was dealing with that and had not
6 acclimated adequately.

7 THE COURT: We call you a flatlander, by the way.

8 MR. KAMIN: I call myself a sea-leveler, but my
9 client is from 7500 feet, so.

10 All right. TVPA 1590(a) requires obstruction of
11 the -- to establish a violation of the enforcement of the
12 TVPA, right. And so the cases have made clear that the
13 case -- well, there aren't that many.

14 THE COURT: Obstruction of what, by the way?

15 MR. KAMIN: Sorry?

16 THE COURT: Obstruction of what?

17 MR. KAMIN: Obstruction of enforcement of the TVPA.

18 So enforcement of, for example, federal law enforcement
19 efforts to prosecute somebody for violating the statute.

20 One example that's actually cited by the plaintiffs
21 is the Doe v. Howard case, the only case cited in the
22 response, and the example there was that there was a couple.
23 They trafficked a domestic worker who they kept enslaved who
24 then left and went to Ethiopia. They were investigated by
25 the state department. The husband flew to Ethiopia to try

1 and intimidate the plaintiff from not being part of that.

2 That's a direct obstruction of a pending federal
3 investigation.

4 It has to have a nexus to enforcement of this
5 statute, and the allegations brought by the plaintiffs don't.
6 What they allege is that -- well, first, that USAT conducted
7 an inadequate internal investigation, delayed its internal
8 investigation and didn't give the FBI enough information
9 about the Lopez brothers. Second, that before that happened,
10 USAT and USOC consulted and worked in concert to obstruct the
11 private investigation, and third, that the USOC gave false
12 testimony to Congress, which obviously was -- I'm sorry --
13 much, much later.

14 None of this concerns enforcement of the TVPA.
15 There is no allegation that a law enforcement agency has been
16 involved -- was involved in this aside from the USAT
17 presenting information to the FBI, which is not obstruction.
18 That's referral. And it doesn't involve the USOC in any
19 event.

20 THE COURT: So it has to be official enforcement
21 and not private party enforcement?

22 MR. KAMIN: Correct. And that's the John Charls
23 (ph) case -- I'm not sure if I'm pronouncing that
24 correctly -- from the District of Connecticut specifically
25 dismissed a TVPA obstruction claim where the interference was

1 with a private investigation. That was a case involving a
2 school for -- a residential school for children where the
3 headmaster was accused of child sexual abuse, and the
4 administrators of the school went so far as to go and take
5 his laptop so that investigators could not see that he had
6 they thought child pornography on it. And the District of
7 Connecticut found that it was not a plausible inference that
8 such action, even though it interfered with a private
9 investigation, would constitute obstruction of this statute,
10 enforcement of this statute. And so again, serious charges,
11 not the facts to sustain it as to the USOC and simply not
12 plausible under Iqbal. So we would ask that both Counts 9
13 and 14 be dismissed.

14 There is also a statute of limitations issue on the
15 obstruction claim where anything that happened before April
16 25, 2008 would not be covered. That's the ten-year statute,
17 and so Your Honor should consider that as well.

18 I want to touch briefly -- and I don't want to
19 outlive your patience.

20 THE COURT: That's not an issue.

21 MR. KAMIN: Okay, good.

22 THE COURT: Of all the things that are an issue,
23 that's not one of them.

24 MR. KAMIN: Well, there are plenty. Let me touch
25 on RICO standing just briefly, because there are numerous

1 grounds why we believe that the RICO causes of action are
2 totally inadequate as to the USOC, but as a threshold matter,
3 the plaintiffs allege no injury to business or property and
4 so there can't be a RICO claim at all in this case.

5 When you review the amended complaint, you see that
6 the plaintiffs allege emotional distress, severe reputational
7 injury to plaintiffs' professional and business interests.
8 In other words, they're alleging personal injuries. And all
9 the cases that are cited by both sides in the briefing make
10 clear that personal injuries, including personal injuries
11 that harm reputation or personal injuries that have a
12 pecuniary impact on the earning.

13 THE COURT: Like the inability to get a job or
14 something like that?

15 MR. KAMIN: Correct.

16 THE COURT: All right, but it needs to be a
17 business interest in your view?

18 MR. KAMIN: And that doesn't qualify. And we've
19 got, you know, the Tenth Circuit in Tal v. Hogan (ph) which
20 is, you know, kind of brushed away by the plaintiffs as a
21 passing reference, but it says explicitly that reputational
22 injury is not personal injury and it's not redressable under
23 RICO, and that's the same as the Seventh Circuit in Santana,
24 Athen Hamm (ph), Southern District of New York. And even the
25 Safe Street's (ph) case, which is a Tenth Circuit case that

1 plaintiffs cite for a permissive reading of their RICO
2 claims, acknowledges that personal injuries are not
3 cognizable.

4 So that's what we believe, and we believe that the
5 complaint demonstrates that all of the injuries alleged are
6 personal, including reputational injury, and that the RICO
7 claim is definitely barred.

8 The last thing I want to note, Your Honor, on
9 negligence is that there is no dispute among anyone that
10 we're dealing, for the USOC's purposes, with a two-year
11 statute of limitations for the negligent causes of action,
12 and so that -- so this case was filed obviously in April of
13 2018. The limitations period would be from April 2016 to
14 April 2018, and all of the allegations here that are --
15 constitute direct injurious conduct towards these plaintiffs,
16 meaning the alleged sexual assaults, predate 2014.

17 The plaintiffs concede in their papers that they
18 can obtain no damages for physical harm that occurred during
19 2006 to 2008, but they don't acknowledge the nexus between
20 the harm alleged and the sexual assault and the claims for
21 any injuries that occurred within the limitations period.

22 What we have is during the limitations period, the
23 conduct, you know, to zero in on is just that they've alleged
24 the USOC testified falsely in Congress. We obviously dispute
25 that. We take huge issue with that. We're assuming it is

1 true for these purposes, but there is no nexus between the
2 injuries claimed, which to my last point on RICO are physical
3 injuries, personal injuries that stem from the assaults to
4 the Congressional false testimony.

5 THE COURT: So basically the theory is, a claim
6 can't be resurrected that's time-barred just because somebody
7 like USOC testifies and that maybe puts the plaintiff in
8 another bad light, a bad light of some sort, and may in some
9 theoretical way cause future damages by making people suspect
10 them of lying or overstating, exaggerating, and you're saying
11 that you cannot create a new harm just by that testimony?

12 MR. KAMIN: That's absolutely right. Colorado
13 specifically holds that emotional distress itself is not a
14 cognizable injury in the absence of physical harm, and there
15 is personal injury -- sorry, physical harm. And there is
16 no -- there is no credible allegation that what the USOC
17 allegedly did in Congress caused such an injury that could
18 sustain that.

19 I think unless Your Honor has questions, I'll end
20 with that and note that we also have a motion to strike the
21 class action allegations because the putative classes would
22 clearly sweep in parties who have not been injured, and so we
23 think under this Court's own precedent and this District's
24 own precedent, that's impermissible and it should be
25 stricken. Of course, we hope it's not necessary to reach

1 that as to us and that you'll dismiss all of the claims
2 against the USOC.

3 THE COURT: Okay.

4 MR. KAMIN: Thank you.

5 THE COURT: Let's bracket these arguments, okay.

6 MR. HUDSON: Thank you, Your Honor. May it please
7 the Court. I'm going to take up the arguments in the same
8 order. I'll begin with forced labor and services. There is
9 a critical phrase that's left out from the USOC's argument
10 and that's the phrase "or in reckless disregard." It's
11 knowing or in reckless disregard. It's a plain language of
12 the statute. So the knowledge element is not knowledge.
13 Recklessness would count. Makes all the difference in the
14 world. The Richio case that they cited, that reversed the
15 12(b)(6) dismissal. Justice Souter sitting on the First
16 Circuit by designation -- we cite that case in our brief,
17 it's great for us -- he reversed the dismissal and found that
18 the case was plausible in part because of this recklessness
19 element.

20 THE COURT: Okay. So recklessness still requires
21 something, and what do you allege that rises to the level of
22 reckless disregard?

23 MR. HUDSON: Certainly. The Meloon allegations and
24 the Gilbert allegations all throughout 2006, 2007, 2008. We
25 extensively plead that the USOC and the USAT knew about and

1 it told the plaintiffs to keep quiet about it, and that would
2 be the recklessness. When you know that a serial rapist is
3 on your team, and not just on your team, but actually the
4 head coach, that's the very definition of recklessness.

5 THE COURT: So I don't remember whether you name
6 names as far as the USOC having said anything at that time.
7 Do you allege anybody in particular?

8 MR. HUDSON: I don't know that we get down into
9 that granular level, but again, back to Richio, plausibility.
10 We're not at sort of a 9(b) particularity standard. These
11 are not fraud claims. They're not governed, and I have to
12 acknowledge his group pleading. That's a great argument if
13 it's a fraud claim. You didn't hear a cite because there
14 isn't one. It's plausibility. You can do a group pleading
15 on claims that are governed by 8(a). These are not fraud
16 claims.

17 THE COURT: Isn't conclusory allegations, isn't
18 that still a problem potentially?

19 MR. HUDSON: It absolutely would be, but a
20 conclusory allegation is much different than naming the
21 entity. And we're suing the USOC. We're not suing the
22 individual officers. We're suing the entity overall.

23 THE COURT: Understood, but can you -- you think
24 you can just allege the USOC said this, but not actually
25 identify anything, any date, any time, any person, any person

1 to whom it was said? You think the allegation standing alone
2 that the USOC --

3 MR. HUDSON: Yeah.

4 THE COURT: -- knew and commented on it is enough?

5 MR. HUDSON: Yeah. I think also that I would defer
6 to a more careful reading of our second amended complaint. I
7 don't have that up in front of me and I'm just going to be
8 candid with you. I think it's in there. I think we actually
9 allege specifically who Mandy Meloon handed her written
10 allegations to and the fact that there was the Meloon
11 arbitration, which you brought up.

12 THE COURT: Right. I just don't know --

13 MR. HUDSON: Yeah.

14 THE COURT: I mean, I haven't heard yet whether
15 that arbitration included any discussion of any allegation of
16 sexual misconduct.

17 MR. HUDSON: Yeah, I think -- I think --

18 THE COURT: Just because somebody who was harmed by
19 a harm you say occurred --

20 MR. HUDSON: Yeah.

21 THE COURT: -- was in an arbitration doesn't mean
22 that that topic came up at all and, therefore, there would be
23 no notice. So I need to know what the foundation is for
24 that.

25 MR. HUDSON: Yeah, and my co-counsel handed me a

1 note that we actually allege three names. John Ruger, Bob
2 Gambardella and Gary Johansen.

3 THE COURT: All with the USOC?

4 MR. HUDSON: Correct.

5 THE COURT: Very good.

6 MR. HUDSON: Speaking of Gary Johansen, he's an
7 interesting person to note. I would specifically draw you to
8 paragraph 268 of the second amended complaint. In one of the
9 media articles about this case, Gary Johansen's e-mail
10 written in March of 2014 is especially probative. In an
11 internal e-mail he says, This should not take six months to
12 prosecute. That was in March of 2014. And the Lopezes were
13 not -- they have yet to be prosecuted, but the investigation
14 itself came to a head in 2018.

15 THE COURT: What paragraph did you say?

16 MR. HUDSON: 268.

17 THE COURT: Okay. The Washington Post paragraph?

18 MR. HUDSON: Yeah.

19 THE COURT: Okay.

20 MR. HUDSON: So that's an e-mail that the
21 Washington Post obtained. Very probative of -- of the USOC's
22 own lawyer admitting this should not have taken as long as it
23 should have, and we know that this investigation dragged on
24 for not just months longer, but actually years longer. And
25 as we allege in the second amended complaint, the average

1 state's court investigation is taking 63 days. The Lopezes
2 took years, right. And so that's pretty probative evidence
3 of some active obstruction going on. There is really no good
4 explanation for that. And again, at the plausibility
5 standard, we get all those inferences in our favor.

6 THE COURT: You think it's enough to say there is
7 no other plausible explanation, that that gets you there?

8 MR. HUDSON: We don't have -- that's not our
9 standard.

10 THE COURT: I thought that was just argued, though.

11 MR. HUDSON: No, I don't think the -- I don't think
12 we have to rule out plausible explanations. I think the
13 Tenth Circuit and the Supreme Court have been pretty clear.
14 We -- we get all reasonable inferences in our favor.

15 THE COURT: Of course.

16 MR. HUDSON: Let's move on a little bit here. The
17 Afare case, I'll agree, if we were in the Fourth Circuit, we
18 would have, you know, some headwind here. We're not in the
19 Fourth Circuit. The Afare case has never become Tenth
20 Circuit law.

21 The other real issue that I see with the Afare
22 case -- and we briefed this pretty extensively. We spent
23 quite a bit of time on our briefing in this case, and I'll
24 acknowledge it's certainly a good case for the USOC to cite.
25 The case reads in commercial sex trafficking into the word

1 "venture." So the statute doesn't say commercial sex
2 trafficking venture. The statute says venture. And the
3 obvious flaw in this decision is they read that out of the
4 statute and they insert the phrase "commercial sex
5 trafficking." Congress knows how to legislate, they know how
6 to write things the way that they want them to read.

7 The other problem, and this is our argument in the
8 brief, this is not a player-to-player situation. This is
9 head-coach-super-star-athlete-to-player situation, totally
10 distinct, right. So John Lopez has enormous power that
11 another player on this hypothetical soccer team does not, and
12 again that's extensively pled throughout the second amended
13 complaint.

14 THE COURT: Jean Lopez?

15 MR. HUDSON: Jean Lopez, yeah. John, Jean. I'm
16 not sure how to actually say it.

17 THE COURT: Oh, okay. Is it J-E-A-N?

18 MR. HUDSON: Yeah.

19 THE COURT: How does he say it? Jean?

20 MR. HUDSON: I apologize. So I think that's --

21 THE COURT: He wants to avoid the French part of
22 it, as we all do.

23 MR. HUDSON: That's right, that's right. The --
24 let's move on to the direct benefit. The direct benefit here
25 is money and medals. It doesn't get any simpler than that.

1 And the statute -- again, the phrasing is interesting, it
2 refers to financial or any other benefit, right. So again,
3 very expansive language used. It doesn't even say that it
4 has to be money. It says money or any other benefit. It
5 doesn't say direct benefit. That's not the language.

6 So again, Congress is legislating very broadly.
7 We're in the Tenth Circuit. We're citing you Tenth Circuit
8 cases, District and Tenth Circuit cases. There is a broad
9 reading of the TVPA generally, and I'll get to RICO in a
10 second. Equally broad reading to both of these. That means
11 that if you're on the fence about these, you broadly construe
12 them because the remedial statutes added -- these are
13 criminal violations. And so Congress realized that there
14 weren't enough criminal prosecutions, they provided several
15 remedies so that lawyers like us would file these cases and
16 become private attorney generals.

17 The inference is, you're supposed to take a broad
18 reading of these statutes. And we cite all these cases in
19 the brief. It's especially true for RICO, but it's also true
20 for the TVPA.

21 On the obstruction claim, I'll move on to that
22 claim. There is absolutely FBI and law enforcement
23 involvement. It's very clearly alleged. The Olympics were
24 coming in 2016, in August of 2016. We have Donald Alperstein
25 writing a letter to our clients where he flat out says, Now

1 that the Olympics are over, I'm going to resume the
2 investigation. We have USA Today writing articles saying a
3 high level anonymous source that USOC and USAT worked
4 together to hold that investigation so that the brothers
5 could go to the Olympics, right. And he writes the FBI
6 months later, in October of 2016. That's the very definition
7 of obstructing a law enforcement investigation.

8 THE COURT: And both were coaches on the 2016 team?

9 MR. HUDSON: No. Steven is the super star athlete.
10 John, Jean, is the head coach.

11 THE COURT: So Steven was still competing in 2016?

12 MR. HUDSON: And in 2017. He went to the World
13 Championships. That's what drew the Washington Post to write
14 the editorial that says Steven Lopez is about to get on a
15 plane and somebody should stop him, right. And so that all
16 continued. That's the obstruction claim, is that all the
17 while the average state's court investigation is 63 days,
18 Gary Johansen says in March of 2014 this shouldn't take more
19 than six months. Yet here we are in 2014, 2015, 2016, 2017,
20 nothing. These guys are walking around free because they are
21 so important to the sport, right. And this is all laid out
22 in exhausting detail.

23 And these are not allegations. Our complaint reads
24 like a summary judgment brief because Congress has already
25 taken these depositions for us. They had official hearings

1 in May, they had official hearings last year. All of our
2 allegations are actually from Congressional hearings or from
3 high level journalists at USA Today, Washington Post, et
4 cetera.

5 THE COURT: Do you have access to all those
6 records?

7 MR. HUDSON: When you say --

8 THE COURT: Congressional records?

9 MR. HUDSON: Absolutely, they're cited and
10 footnoted in the complaint, and we provided the Westlaw
11 citation.

12 THE COURT: Right, but there has been -- I mean,
13 nothing was withheld by Congress as far as releasing
14 documents?

15 MR. HUDSON: Not to my knowledge, no.

16 THE COURT: Okay.

17 MR. HUDSON: I think that covers the obstruction
18 claim.

19 Let's move on to RICO. RICO in the Tenth Circuit
20 is an extremely strong claim right now. We briefed this.
21 Everything changed in RICO beginning in about 2009 on the
22 enterprise element and as well on causation in a case called
23 Bridge the year before. Probably the best way to explain
24 RICO, I think most RICO claims are over-pled, and you'll note
25 that we didn't add a RICO claim here until the second amended

1 complaint, and we're suing USA Diving. We're not pursuing a
2 RICO claim there.

3 RICO is not something that we throw around lightly.
4 I have several RICO claims right now. I take them very
5 seriously, and they are serious allegations, but they are
6 specifically designed for situations like that -- like this.
7 And by this, I want to kind of draw attention to two things.
8 The enterprise element and the pattern element. And the way
9 to think about both of these is two or more, right. And so
10 on the enterprise element, the case is Boyle (ph) from the
11 U.S. Supreme Court in 2009, totally change the way that RICO
12 enterprise element exists.

13 Judge -- Judge Gorsuch, now Justice Gorsuch, in a
14 case called Hutchinson when he was on the Tenth Circuit,
15 probably the best RICO decision out there in explaining the
16 enterprise element of a RICO claim. He does an amazing job
17 of explaining what happened. And the Tenth Circuit was on
18 the other side of the wall. In other words, when Boyle came
19 down, it was resolving a circuit split. The Tenth Circuit
20 got reversed, and that's what Judge Gorsuch was acknowledging
21 was the world looks very different now than it did before
22 Boyle was handed down, right.

23 And so when you're reading RICO cases and they're
24 before 2009, you should have -- you should take a long pause
25 as to why somebody is citing them. They're citing them

1 because the law was a lot better before 2009, and as a former
2 defense lawyer, I cited many of those cases, and I am very
3 much aware of the stigma of RICO and why most people think
4 that it doesn't work. And I will agree that a lot of times
5 plaintiffs' lawyers abuse RICO and they try to plead it when
6 there is not more than two -- two or more entities involved.

7 In this situation, though, we have that. We have
8 the USOC and USA Taekwondo working together to accomplish
9 something that one of those entities could not have
10 accomplished on their own, and that becomes especially clear
11 when you look at the obstruction that sent the Lopez brothers
12 to the Olympics. Had both entities not come together to work
13 together to make sure that nobody outed what was going on,
14 this scheme would not have worked.

15 THE COURT: Wait a second. What we just heard
16 Mr. Kamin was the NGB is in charge and the USOC is
17 essentially passive until they are given the roster for the
18 Olympics, and even then only if they have a reason to reach
19 out and do something would they even do anything. So
20 aren't -- aren't they a passive at best participant?

21 MR. HUDSON: No. I mean, a couple of things on
22 that. Number one, that's not pled in the complaint and so
23 none of Mr. Kamin's argument, as good as it is, can be
24 admissible.

25 THE COURT: Understood.

1 MR. HUDSON: And we plead in the complaint that the
2 USOC does control it, and I think he even agreed, it's pretty
3 much irrefutable and certainly taken as true in the
4 complaint. The USOC approves the final roster, right. So
5 the USA Taekwondo submits the names, USOC approves the names.
6 Certainly if the USOC had rejected the brothers, they would
7 not have been in the Olympics, and that's exactly what
8 happened.

9 We also know that USOC appoints 50 percent or more
10 of the board members, and so we have a lot of cross
11 contamination. The USOC's fingerprint, so to speak, are all
12 over USA Taekwondo. In fact, the USOC suspended USA
13 Taekwondo in 2013 and ran the organization. It's -- that's
14 pretty much dispositive on the idea that USOC can't exercise
15 day-to-day control. They did exercise day-to-day control for
16 an entire year, right.

17 The other -- the other point that I would make on
18 RICO is the pattern element. This is another reason why a
19 lot of RICO claims fail. You don't see enough predicate
20 acts. And again, it's two or more, two or more within ten
21 years. Our predicate acts here are pretty clear. Every
22 violation of the Trafficking Victims Protection Act is a
23 predicate act. We also have an additional predicate act
24 known as corruption of an official proceeding.

25 The EpiPen case which I'm involved in in the

1 District of Kansas is really the only case ever to my
2 knowledge that's addressed Section 1512(c)(2), which is
3 corruption of an official proceeding and how that works as a
4 RICO predicate. And in that case we allege that the head of
5 Mylan falsely testified at Congress about EpiPen crisis. And
6 on a motion to dismiss, plausibility standard, those
7 allegations were deemed sufficient to go forward with
8 discovery.

9 The facts here are way better. We have multiple
10 lies told by both the head of USAT and the head of USOC who,
11 by the way, has been referred to the DOJ and the FBI for
12 criminal prosecution for lying to them about USA Gymnastics,
13 right. So again, not me guessing, me pointing back and
14 saying this is what happened.

15 Now, you're seeing briefing now opposing our
16 conditional motion for leave to amend, and they're saying,
17 wait a minute, gymnastics isn't Taekwondo, those are totally
18 different. That's where RICO comes into play. That's why
19 RICO is designed to stop is people from saying, oh, that's
20 not me, that's him. That's not this situation, that's that
21 situation. It's all related.

22 In fact, if you look at paragraph 2 of the second
23 amended complaint, on the very first page, Representative
24 Harper, the chair of the oversight committee of the house who
25 is holding the hearing says within two sentences of each

1 other that we have the same allegations in Taekwondo that we
2 have in gymnastics. They're directly related.

3 I want to move to his standing argument, though. I
4 have several responses. The first is that we do allege a
5 business injury. We allege that their business careers were
6 wiped out. These are Taekwondo athletes. Just because
7 they're not actively fighting now doesn't mean they wouldn't
8 be. Steven Lopez -- as we argue in our briefing, Steven
9 Lopez is in his 40s. He's still competing.

10 If our clients hadn't been abused out of the sport
11 and had the head coach not been still there, they very well
12 would be still competing. That's our -- that's our whole
13 case is that these women were trying to compete in Taekwondo
14 and they were abused out of the sport.

15 We also allege that they're still dues paying
16 members to USA Taekwondo, which means that they have a \$50
17 damage at a minimum, right, because business or property is
18 defined to include money. If they're paying dues and that
19 money is funding the very obstruction efforts against them,
20 then they have a \$50 injury. It only takes one dollar to
21 create damages. And we're not even talking about damages.
22 We're talking about standing.

23 We also have additional arguments. They've
24 conceded our disgorgement argument, which is another form of
25 relief. We cite the U.S. Supreme Court case Intercat, which

1 is the original sort of interpretative decision from the
2 Supreme Court. Intercat says one of the main purposes of
3 RICO is to take away the proceeds from the bad actors. Under
4 their reading, their view is, well, yeah, this was really bad
5 stuff, but you guys don't have standing to enforce it. That
6 doesn't make any sense. There has to be a remedy here.
7 Their view is that the victims of the obstruction don't have
8 a remedy. That can't be right. There has to be a remedy.
9 Congress intended a remedy. We cite the language in 1964
10 which allows you to disgorge their profits. They don't
11 address that argument.

12 We also have the injunctive relief argument. I
13 will agree that it's an unsettled question, but there is no
14 Tenth Circuit law that says you can't order injunctive relief
15 on behalf of a private party. This enterprise has been going
16 on for years. We think that it needs to stop, and one of the
17 ways to stop it is for you to enjoin them from doing that.

18 THE COURT: But wait a second. Isn't the last
19 allegation of any improper conduct dating back quite a few
20 years now?

21 MR. HUDSON: No. Well, no, the last allegation of
22 improper conduct was a mere months ago. It was lying to
23 Congress.

24 THE COURT: Okay, so that's part of the enterprise?

25 MR. HUDSON: Right, and that's an important --

1 that's a very important point here. There is -- this is
2 really two cases in one in the sense that you have the
3 underlying abuse, and I'll agree, I'm not going to dispute a
4 lot of the abuse we're probably going to be time-barred on,
5 but as is so often the case, the coverup is the ultimate
6 crime here. And the coverup is ongoing and the coverup had
7 not even really matured until we filed the second amended
8 complaint.

9 We filed this case in April of 2018. I just
10 mentioned the May 2018 hearing on the first page of our
11 complaint. That hearing hadn't even occurred at the time
12 that this lawsuit was filed. This is ongoing activity. And
13 hopefully Mr. Blackman will be prosecuted by the FBI and the
14 U.S. attorneys and hopefully he'll be removed. He's already
15 retired, but hopefully that will take care of itself, but
16 this -- this conduct is certainly ongoing, and the best way
17 to make sure that it continues is to dismiss them from this
18 case and send a green light to them that this is okay, that
19 you guys should keep lying to Congress.

20 I think the -- the last point that I would make on
21 the RICO claim is also the conspiracy element. 1962(d) is
22 very broadly construed, even more so than RICO. Again, Safe
23 Streets is the 2017 Tenth Circuit decision, very first
24 substantive discussion of RICO. RICO is to be broadly
25 construed, right.

1 1962(d) is even more broadly construed than the
2 underlying violation, and that means, for instance, if you
3 don't think the Lopezes and you don't think SafeSport are
4 active members of the enterprise, that doesn't mean that they
5 get to walk away. They could still be liable under the
6 conspiracy statute. And again, we cite the Tenth Circuit
7 cases on that.

8 I think that pretty much covers what I wanted to
9 talk about. Any questions you might have?

10 THE COURT: No, thank you.

11 MR. HUDSON: Thank you.

12 MR. KAMIN: This may not be as coherent as I would
13 like because that was a lot. I want to start just by saying
14 how wildly inappropriate it is to cite the motion for leave
15 to amend and the evidence appended thereto in support of
16 their opposition. That was -- our whole point of opposing
17 that was that that was an end run and a way to supplement the
18 allegations in the claim.

19 THE COURT: Happens all the time.

20 MR. KAMIN: Right. And it shouldn't, Your Honor,
21 because here it's really more of the same where we have
22 citations to things that don't directly relate to the
23 allegations in this case. Congressional testimony concerning
24 the USOC's budget, right, and that is cited both as
25 obstruction and as a predicate act for RICO. It just -- it

1 doesn't compute. There is no causation there.

2 So -- but let me say, first of all, in terms of
3 what I said at the outset of my remarks, it -- the
4 relationship between the NGBs and the USOC is pleaded in the
5 complaint. If you look at paragraphs 94, 95 and 97 it says
6 each NGB is charged with promoting competition its respective
7 sports. '95 each NGB is charged with selecting the athletes,
8 officials and coaches for its sport at the Pan Am Games,
9 World Championships, World Cups and Olympics Games. And '97
10 is that the USOC approves the submissions of the coaches,
11 athletes and officials by each NGB for participation and
12 protected competitions.

13 Your Honor obviously also can take notice of the
14 Amateur Sports Act and the way that it dictates the
15 relationship between the USOC and the NGBs.

16 On RICO, Your Honor, the -- so starting with
17 standing again, the argument was made that there was damage
18 to the plaintiffs' careers. In the complaint it is stated
19 that that damage stemmed from reputational injuries, which
20 are personal injuries and are not cognizable under RICO.

21 The citation to Boyle is a little puzzling because
22 Boyle did say that an enterprise needs to have -- does not
23 need to have a tangible structure, and in that sense Justice
24 Gorsuch did expand the prior thinking around enterprise, but
25 that's not our basis for claiming no enterprise existed, and

1 you can see this in our papers. It's really because there
2 are no factual allegations to support that the USOC worked in
3 concert to further these so-called objectives. The predicate
4 acts are based on the causes of action that we think should
5 be dismissed, including the TVPA and obstruction causes of
6 action.

7 And in terms of other aspects of the RICO claim,
8 the Supreme Court in 2010 after 2009 in the Hemi case talked
9 about approximate causation. That's another ground to
10 dismiss the RICO cause of action, Your Honor, where the
11 Supreme Court requires a direct relation between the injury
12 asserted and the injurious conduct alleged, and that's again
13 where we have the disconnect that I noted before where even
14 if you accept as true the allegation that people from the
15 USOC testified falsely to Congress, that there is no
16 relationship between the harm alleged here with these
17 plaintiffs.

18 And we are bound by the fact that these are the
19 plaintiffs here, which is why Your Honor respectfully must
20 focus on the specific allegations as to them and whether they
21 pan out, and they don't.

22 And going back to the TVPA just for a moment,
23 counsel noted or stated that in 2006 USOC was on notice that
24 Jean Lopez, or maybe it was Steven Lopez, was a serial
25 rapist. That's not what is stated in the complaint. What is

1 stated is that there was a complaint made in 2006 by
2 Ms. Meloon. It doesn't say what the content was or what it
3 communicated to the USOC.

4 One of the names of the people that he noted was
5 not USOC (inaudible), so it is alleged in the complaint that
6 a -- you know, something was completed to two representatives
7 of the USOC, but we don't know what that was. What we know
8 is that there was a USAT proceeding after that and this
9 arbitration concerning her disqualification.

10 So I -- you know, Judge, the comment about group
11 pleading being permissible is -- is just not correct. There
12 is a need to make positive inferences where there is a
13 potential difference of opinion on things here. I'm not
14 arguing as a basic standard on a motion to dismiss, but we
15 also have to observe the basic standards for presenting
16 allegations under Iqbal and group pleading is impermissible.
17 You can't -- and it's particularly impermissible where other
18 allegations in the second amended complaint undermine what is
19 alleged as a group action.

20 So, Your Honor, I'll just state in closing again
21 that when you look at the actual allegations as to the USOC,
22 when you look at the actual elements of these very serious
23 claims against the USOC, they should be dismissed.

24 THE COURT: Very good.

25 MR. QUINN: Good afternoon, Tom Quinn on behalf of

1 USAT. If the arguments have been scattered, I will be
2 adopting and incorporating what has already been said so we
3 can --

4 THE COURT: Did you just call these guys scattered?

5 MR. QUINN: Maybe. No, I didn't. If my arguments
6 appear scattered.

7 THE COURT: Okay.

8 MR. QUINN: No, but let's start, we do -- first of
9 all, Your Honor, USAT does agree that the claims in this
10 lawsuit are obviously serious, but we're here today to
11 examine questions of law and the application of the alleged
12 facts to those questions of law. And those sometimes make
13 for harder decisions for all us to move through, and that's
14 really what we're here today to do.

15 So first and foremost USAT joins in USOC's motion
16 to dismiss the initial two claims, which it has already
17 previously identified. And additionally, I'm just -- instead
18 of asking for dismissals on each separate claim for relief as
19 we move through this, I'm just going to incorporate our
20 request for dismissal now as to all of our claims.

21 So let's start with the statute of limitations
22 arguments on the sex trafficking statute Title 18 claims. So
23 really they're sort of -- I'm trying to break this down as
24 simple as possible. There is really two ways to approach the
25 statute of limitations claim. And the first is: When was

1 the last sex act that is alleged to have occurred, that is,
2 and is alleged to have been in conjunction with a USAT event?
3 And the second way to look at it is: What are the timing of
4 the sex acts alleged regardless of their connection with the
5 USAT? And under either analysis the claims under Title 15
6 must be dismissed because they're barred by the statute of
7 limitations. So taking that analysis.

8 Under 15 -- the last alleged sex act as -- the
9 plaintiffs that remain against USAT would be in -- at the
10 USAT Bonn event in 2006. Statute 1595 did not come into
11 effect until December 2008.

12 So as -- with respect to any sex act that is
13 alleged to have occurred at a USAT event, the statute which
14 allows a claim against USAT didn't even come into play until
15 two-plus years later.

16 THE COURT: Well, what month in 2006?

17 MR. QUINN: 2006 -- it would have been June 2006 I
18 believe was the Bonn Olympic -- was the Bonn -- April 2006
19 was the Bonn event, I apologize. And then December 2008 was
20 when the statute was amended to allow claims against others
21 than the direct perpetrators.

22 Okay. So then you move over to: What are just the
23 sex acts that are claimed? So as related to Gabriela Joslin,
24 Counts 4 and 5 remain, and she says there is no plausible
25 allegations of a sexual misconduct after 2008. It's just not

1 alleged with any particularity in the complaint. And so what
2 we really end up then is because she does allege some sex
3 acts earlier in the year with particularity, but there is
4 nothing alleged after December 23, 2008, which is the date
5 that the -- that the statute is amended to allow claims
6 against -- against entities like USAT. So that is -- that is
7 what we have with respect to Gabriela Johnson.

8 With respect to Amber Means, her last allegation of
9 sexual relationship was in 2006, and that was obviously well
10 before the -- the date of the incorporation of the statute.
11 I'm sorry, I said 2006. I meant June 2008 where she was
12 allegedly drugged and raped by Steven Lopez at a condominium.
13 I apologize for having that date backwards, but that's still
14 well in advance of the December 2008 adoption of the -- of
15 the -- of the statute.

16 What is also important to note is that although
17 there is a claim that Ms. Means had continued -- there were
18 allegations of sex that occurred into 2010, there is no -- it
19 is not alleged with any specificity, there is no time, there
20 is no place, there is no date, there is no anything with
21 respect to that as opposed to the other allegations that have
22 occurred with particularity before that date.

23 I would like to move onto the obstruction claim.
24 The plaintiffs do not identify any duty breached by USAT when
25 it purportedly obstructed an enforcement. In other words, it

1 doesn't say that it did anything to -- that it owed a duty to
2 any of these plaintiffs in terms of going and testifying to
3 Congress at any time or with respect to the way it hired and
4 administered the Alberstein investigation.

5 Importantly, there must be a real and ongoing
6 investigation to obstruct. You can't -- what they want to
7 say is the conduct of USAT in its -- in either hiring
8 Alberstein or in its communications with -- with the USOC
9 taking these allegations as stated obstructed something.
10 Well, it didn't obstruct anything. The first time there was
11 ever an investigation into anything was in Congress, and so
12 there has to be an object of the investigation in order to
13 obstruct it. And so that just did -- that never occurred
14 until we got to the congressional investigations.

15 THE COURT: What about efforts that prevented
16 investigation from even being initiated? You just argued
17 about obstructing an ongoing investigation, but would that --
18 hypothetically would that also be included in the statute?

19 MR. QUINN: I don't believe so. You have to have
20 it -- you have to obstruct something. There has to be
21 something to get in the way of. And when you talk about --
22 and we've also pointed out in our papers it has to -- you
23 know, I didn't really touch on it because I think we touched
24 on it earlier, it really has to be a government investigation
25 or it has to be at least under the statutes that have been

1 appointed. So there has to be -- you have to do something to
2 obstruct it, okay.

3 RICO. All right, so a couple of things on RICO.
4 First of all, we adopt all of the enterprise arguments that
5 have been previously made so I don't need to go into those.
6 Importantly when we talk about predicate acts, I want to
7 first address the following:

8 18 U.S.C. 1590(b), the obstruction for Count 14 is
9 insufficiently pled as I have just discussed because there
10 was no obstruction. I mean, you've got to come up with
11 something to obstruct. So there has to be a predicate act to
12 obstruct something.

13 Then the second is 18 U.S.C. 1592(c)(2). This is
14 alleged in the complaint, but I think it's a typo and when
15 you get down to writing it, because there is no obstruction
16 (c)(2) in the statute. And that really -- that statute
17 really criminalizes destruction of a passport or immigration
18 document. I don't think we have to talk about that here
19 today. I'm certain that's a typo, but I --

20 Then the final -- offer the revision from the first
21 amended complaint to the second amended complaint 15 -- it
22 seems there are no 1591 claims against USAT regarding -- with
23 respect to the RICO claims against USAT. So where does that
24 take us right now?

25 We get back to the injury to reputation, dignity,

1 emotional distress are not actionable. Now, plaintiffs claim
2 theoretically that if they had not been drummed out of -- out
3 of Taekwondo or out of the Taekwondo competition that they
4 would have a business today of sorts. That is incredibly
5 hypothetical. It is -- it is -- it's still a business --
6 they're saying they can't be in business because
7 fundamentally there has been a harm to their reputation or
8 their dignity or for some emotional distress reason they
9 can't operate the business. I mean, there is still the
10 underlying fundamental components of the personal injury
11 aspect or RICO claim underlie their business --

12 THE COURT: Well, it's not much a stretch to say
13 that someone who has competed at that high level could go
14 back at some medium-sized city and open a Taekwondo class or
15 gym. I mean, that -- that happens all the time, doesn't it?
16 And if you have a terrible reputation, how are you going to
17 be able to do that?

18 MR. QUINN: Well, when you say high level, let's
19 start with that. What do you mean? At what high level?
20 None of these were Olympians.

21 THE COURT: Right, but it sounds like they competed
22 in national -- in international competitions.

23 MR. QUINN: Perhaps.

24 THE COURT: Okay.

25 MR. QUINN: I still -- the reason why you can't

1 open a business, taking your hypothetical out, is because
2 there was an injury to your reputation, dignity, or your
3 emotional distress. There wasn't an injury to an ongoing or
4 existing business. There wasn't an injury to any of that as
5 is required under RICO.

6 THE COURT: So the injury to a prospective business
7 is insufficient in your view?

8 MR. QUINN: Yes.

9 THE COURT: Okay.

10 MR. QUINN: Let's move on to negligence. I think
11 we've stated clearly that we're assuming the state laws of
12 Colorado, California and Texas will govern this -- the
13 resolution of this issue.

14 THE COURT: So I'm looking at one of the
15 allegation, for example, it's 585.

16 MR. QUINN: Are you at paragraph 585?

17 THE COURT: Yeah. Alleging that the harassment in
18 a Taekwondo community harmed a business.

19 MR. QUINN: Bear with me a moment.

20 THE COURT: And that's Ms. Gilbert.

21 MR. QUINN: Well, first of all -- hang on one
22 second. Heidi Gilbert is not a plaintiff with the remaining
23 claim against the USAT.

24 THE COURT: Understood. So I think that -- it
25 looks like that might be the only direct allegation with

1 regard to a person other than a reputation that might have
2 impeded future business opportunity, so, okay.

3 MR. QUINN: All right. Going back to the statute
4 of limitations, were assuming the state laws of Colorado,
5 California and Texas apply. They all have two-year statute
6 of limitations on negligence claims. The first amended
7 complaint, which was the first time that USAT was named a
8 defendant in the case, was filed on May 4, 2018. Simply put,
9 there are no allegation of sexual misconduct after May 4,
10 2016 by Means or Joslin.

11 THE COURT: Okay.

12 MR. QUINN: All right. Plaintiffs' theory in 2016
13 or 2017 and 2018, there were -- there were allegations that
14 the Lopez brothers will still remain part of USAT and there
15 is unfavorable testimony or statements about the plaintiffs
16 in general made by members of USAT.

17 The last competition that any of these two
18 plaintiffs participated in according to the complaint was
19 2011. No -- they are no longer participating in USAT
20 competition. And so realistically we come down to you have a
21 former member of an organization and now you have -- and now
22 what appear to be five or six years later you continue to
23 have coaches who they claim caused them harm.

24 What is the duty, breach, cause and damages to each
25 of those plaintiffs? There is simply too big of a

1 connection. There is no duty that I can see that's owed
2 between them or is alleged that's owed between them at that
3 time.

4 Let me go back to -- I think I missed one last
5 thing on the RICO, and that is -- I'm just checking my notes,
6 Your Honor, before I say anything. So I wanted to go back
7 with respect to your question, and, you know, is there an --
8 did -- does the question of personal harm today, can it be
9 expanded to create a RICO action for prospective business? I
10 think I said that.

11 Looking at the Doe v. Schneider case out of the
12 Eastern District of Pennsylvania, 2009 case, the conclusory
13 allegation, we're trying to -- what I'm trying to bring from
14 that case is that a conclusory allegation of personal harm
15 today still requires identification of a contractual
16 employment opportunity that plaintiffs lost. So it has to be
17 with more specificity than just a potential future claim. It
18 has to be pled with specificity for a loss of contract or
19 employment opportunity.

20 Thank you.

21 THE COURT: Very good, thank you. Ms. Walsh.

22 MS. WALSH: Larkin Walsh for the plaintiffs. I
23 just want to address quickly one or two of the points that
24 Mr. Quinn raised, and then I will turn over to my co-counsel
25 to address a few of the other points.

1 I think that our briefing makes clear, and if it
2 doesn't, I will try to do that right now, that there is not
3 really a dispute as far as plaintiffs are concerned that the
4 kind of the benefit or liability, for lack of a better term,
5 for the TVPA claims doesn't start until -- it doesn't come
6 into existence until December 23, 2008. That's as far back
7 as this statute allows it to go because that's when it was
8 effective and created liability for -- for entities.

9 And so I think that I want to make sure that we're
10 understanding -- our theory of the case and how we plead our
11 claims is that these women were exploited, they were coerced
12 into providing sexual services in exchange for being allowed
13 to compete at a high level in their sport. For Gabby, that
14 started in 2006 and it continued through her career in
15 competitive Taekwondo through 2010. For Amber, that started
16 in 2007, 2008 when she moved down to Texas and it
17 continued -- the exploitation, the pay-to-play sexual
18 services continued.

19 We include specific examples of sex acts, as
20 Mr. Quinn refers to them, in the complaint, but the
21 allegations are that the -- the exploitation, the forced
22 sexual services, the trafficking occurred over a span of
23 years and includes timely claims, claims that postdate
24 December 23, 2008 against United States Taekwondo and the
25 United States Olympic Committee.

1 The other thing I wanted quickly to address -- and
2 I think my co-counsel will also pick this up -- you referred
3 to a paragraph in the complaint that had to do with Heidi
4 Gilbert and the fact that she is still a Taekwondo coach, and
5 Mr. Quinn indicated that Heidi doesn't have any claims
6 against USA Taekwondo, but that's not accurate. The
7 obstruction and the RICO claims and negligence claims are by
8 all plaintiffs against -- all plaintiffs -- all defendants,
9 including United States Taekwondo.

10 And I also just wanted quickly to -- I think my
11 co-counsel will pick this up, that the definition contained
12 in the TVPA that prohibits obstruction and under which our
13 obstruction claim is based is very broad. It prohibits
14 obstructing, attempting to obstruct or in any way interfering
15 with enforcement of this section. And this section relates
16 to the forced labor -- trafficking and forced labor. And the
17 obstruction we allege was ongoing. There is no qualifier
18 there about an official proceeding has to be in place. The
19 statute itself is very broad.

20 And I'm going to turn it over to my co-counsel Ryan
21 Hudson. Thank you.

22 THE COURT: Thank you.

23 MR. HUDSON: Thank you. May it please the Court.

24 Obstruction --

25 THE COURT: Better state your name, I think.

1 MR. HUDSON: Oh, I apologize. Ryan Hudson for the
2 plaintiff.

3 THE COURT: Yeah, this is just a recorded
4 proceeding.

5 MR. HUDSON: On the obstruction claim, I would
6 refer the Court to paragraphs 217 through 220 of the second
7 amended complaint and also paragraph 68, which I referenced
8 earlier, the Gary Johansen e-mail. The investigation started
9 in 2014. In fact, USAT told Congress under oath that they
10 hired Donald Alberstein in 2015 and that he was independent
11 and entirely allowed to conduct an investigation.

12 So the notion that there was no investigation until
13 they were in front of Congress cannot be squared with
14 Mr. McNally's sworn testimony to Congress that they began the
15 investigation three years before then. That's really all
16 there is to say on that.

17 On the RICO claim, again, I will acknowledge there
18 was one typo in the second amended complaint that I think
19 USAT was referring to. The second reference is accurate, and
20 that again is 1512(c)(2), corruption of an official
21 proceeding. We do acknowledge the first typo and apologize
22 for that.

23 THE COURT: What paragraph is that?

24 MR. HUDSON: I don't actually have it in front of
25 me.

1 THE COURT: (c) (2) is referred in 864.

2 MR. HUDSON: It's the very first reference in the
3 RICO count. So the first time that we mention it in the RICO
4 count, we use 1592 instead of 1512.

5 THE COURT: Understood.

6 MR. HUDSON: And so I apologize, the intention
7 there both times was to use 1512(c) (2).

8 THE COURT: Got it.

9 MR. HUDSON: Okay. And again, that was lying to
10 Congress. It's probably worth breaking out each lie. You
11 know, we have three lies from Mr. Blackman and we have two
12 lies from Mr. McNally. Mr. Blackman lied about the USOCs
13 have more money than the USOC.

14 THE COURT: Well, wait. What did you just say?

15 MR. HUDSON: He said that the NGBs have more money
16 than the USOC. He said that only 7 percent of the money goes
17 to overhead. And we have tax professors from major
18 universities articulating in detail why that's false and
19 misleading. We have the Washington Post writing editorials
20 about how the USOC is playing tax games and misrepresenting
21 the source and the use of its income.

22 And as to materiality and causation, these were
23 hearings specifically about the USOC and the NGBs. Congress
24 is their parent. And Congress created them, can destroy
25 them, can reform them at the snap of a finger. It's

1 absolutely material. And that was the very purpose of those
2 hearings, the multiple hearings. Not one, not two. I think
3 there has been three so far.

4 THE COURT: You're not aware of any attempt by
5 Congress to engage in contempt proceedings against any of
6 those people?

7 MR. HUDSON: Not as of now, no.

8 THE COURT: Okay.

9 MR. HUDSON: As to Mr. McNally, we pinpoint that
10 he -- that he represented that Mr. Alberstein was free to
11 investigate and he was independent. We know that's not true
12 because we know that they suspended the investigation and
13 told him to stand down in August of 2016 so the Lopezes could
14 fly to the Olympics. We know that they represented that they
15 turned information over to law enforcement, which is the
16 exact phrase that they say we need to allege.

17 THE COURT: So you're alleging that even taking a
18 pause to allow a team to compete in the Olympics and then
19 getting right back to it is an obstruction?

20 MR. HUDSON: Absolutely.

21 THE COURT: Okay.

22 MR. HUDSON: And it's more than a pause. When you
23 have an active investigation and you stop that investigation
24 and the timing happens to be the four-year -- U.S. -- the
25 Olympic games, I would call that more than a pause.

1 And again, as we reference, the language in 1590(b)
2 is unusually broad. It's obstruct or in any way interfere.
3 And we have a confession in our view, and it's taken in
4 inferences in our favor, Mr. Alberstein flat out writes in a
5 letter, Now that the Olympics are over I'm going to resume
6 the investigation. That's -- as somebody who has done
7 criminal defense work, that's pretty -- pretty good.

8 So we have him saying we turned over all the
9 information to law enforcement, we plead in detail, we've
10 hired investigators, we know that in Sugarland, Texas that
11 did not happen. This is extensively pled in the second
12 amended complaint. So we've alleged these predicate acts in
13 detail.

14 You heard about causation both from USOC and USAT.
15 I have to note the Hemi case. First off, it's a plurality
16 only opinion. Second off, the phrase they used is some
17 direct, not direct, but some direct; big difference. Same
18 argument was made in EpiPen, same argument was rejected in
19 EpiPen. Causation is inherently a fact question.

20 Certainly in a case like this, at the pleadings
21 stage, it is impossible to determine what caused something
22 and whether that testimony did or did not cause something.
23 That's just an impossible guess to make. We cite all that
24 case law. There is three or four Supreme Court cases on
25 causation. Hemi is the one that the defense likes to cite,

1 but it wasn't -- it wasn't a majority opinion. Language
2 isn't nearly as strong as they would like it to be.

3 Finally, on damages, again, we are perhaps --
4 perhaps we will prevail at trial and perhaps we will not
5 prevail, but I think you yourself elicited we're not experts
6 on what a high-level Taekwondo athlete is. We're not in the
7 business of judging Taekwondo careers and predicting who
8 would or would not have. That's not something that at the
9 pleadings stage we do. We are very much prepared to retain
10 an expert witness to address this, to articulate the damages.

11 Also it's -- again the point has been made two of
12 our plaintiffs right now are professional Taekwondo coaches
13 right now today in 2019: Heidi Gilbert and Mandy Meloon.
14 And actually, I apologize, not Mandy Meloon, Gabriela Joslin.
15 And so that's pled in the second amended complaint. That
16 means this is their career to this day.

17 And so when these allegations come out against them
18 and USOC and SafeSport and USAT take the side of the Lopezes,
19 that undermines their business and their career to this day.
20 And that's partially why they're paying a \$50 annual fee to
21 USAT every year, and I think four of the five plaintiffs have
22 paid \$50, well within the statute of limitations ground.

23 So you have all sorts of other RICO damages. I'm
24 just addressing the one that was argued by USAT. If the
25 Court has any other questions.

1 THE COURT: Nope.

2 MR. HUDSON: Thank you.

3 MR. QUINN: May I, Your Honor?

4 THE COURT: Please.

5 MR. QUINN: With respect to the TVPA statute of
6 limitations claims, I think our -- the complaint, the second
7 amended complaint will stand on its own with respect to the
8 alleged sex acts, whether they were done in conjunction with
9 the USAT-sanctioned events or outside of USAT-sanctioned
10 events. The chronology will be what it will be. I'm
11 comfortable in the arguments that we've made.

12 With respect to the obstruction argument and the --

13 THE COURT: Let me ask you that. So Ms. Walsh
14 brought up a standard of interfering with enforcement of this
15 section, all right, and would that include private
16 enforcement?

17 MR. QUINN: So I'm not -- can you --

18 THE COURT: She brought up that the statute
19 prevents interference with the enforcement. Was that in the
20 obstruction analysis? Her --

21 MS. WALSH: Yes.

22 THE COURT: Her words were interfering -- the
23 standard is as broad as interfering with the enforcement of
24 this section.

25 MR. QUINN: Okay, I'm not familiar with it. And

1 here -- and I apologize, I was looking back at statute of
2 limitations.

3 THE COURT: Okay.

4 MR. QUINN: Let me go forward and I'm ready --

5 THE COURT: Okay. So you're just focusing on
6 limitations?

7 MR. QUINN: I finished up. I'm ready to move on to
8 obstruction. So I can answer the question, I apologize. I
9 wasn't tracking.

10 So when you look at the obstruction, attempted
11 obstruction, interference with enforcement in violation of 18
12 U.S.C. 1590(b), 1591(b), 1959(a), the language of the
13 respective subparts of those statutes makes it clear that the
14 prohibitive -- prohibited obstruction is confined to a
15 government act or a government investigation.

16 Importantly to your question, both 18 U.S.C.
17 1590(b) and 1591(d) articulate obstruction violation if
18 someone, quotes, obstructs, attempts to obstruct or in any
19 way interferes with or prevents enforcement of this section.

20 THE COURT: Right. So -- so any statute that
21 allows both private and public enforcement, which this one
22 does --

23 MR. QUINN: Yes.

24 THE COURT: -- and if they engage in acts that are
25 designed to make sure that these allegations never see the

1 light of day in any kind of private enforcement proceeding,
2 like a lawsuit, whatever, so they actually try to squelch
3 much this kind of lawsuit from ever being brought, you're
4 saying that that is not sufficient under the statute?

5 MR. QUINN: I'm saying it's not sufficient under
6 the statute, but it's contrary to the allegations as pled. I
7 mean, what Mr. Hudson was just saying is, wait a minute, they
8 did start an investigation in 2015. We admit that we started
9 an investigation. And so we were out there investigating and
10 then he claims that we -- and then the suggestion is because
11 they wanted the 2016 Olympics to go forward, we then
12 obstructed our own investigation.

13 I'm not sure that the statute really applies to
14 obstructing your own investigation. It might, but I don't --
15 I don't read it that way. I think you have to obstruct
16 another investigation, likely a government investigation.

17 So I want to be clear that I'm -- that even the
18 complaint is inconsistent with the allegation of obstruction
19 because we did investigate and then we purportedly
20 interrupted our investigation and then -- and then refilled
21 it again.

22 I think the entire obstruction claim is not well
23 founded either in law or in fact in the case. Thank you.

24 THE COURT: Thank you. Since Ms. Larkin brought up
25 this point, I'm looking to the complaint and all I see are

1 allegations of interfering with efforts to enforce federal
2 and state laws. It never does -- well, there is one
3 allegation of interference with complaints or reports
4 regarding the sexual physical misconduct of the Lopez
5 brothers, but do you ever specifically allege any kind of
6 interference with anything other than an official
7 investigation?

8 MR. WALSH: Your Honor, this is Larkin Walsh for
9 the plaintiffs. I guess -- can I ask you what you're looking
10 for when you say an official investigation?

11 THE COURT: Well, they keep arguing government, and
12 I call that official. So official -- in this context in my
13 world anything that has official in front of it means
14 somebody who is paid by the government, either the state,
15 local or federal government.

16 MR. WALSH: And my co-counsel is also wanting to
17 answer your question, but let me just say --

18 THE COURT: Anybody can answer it.

19 MR. WALSH: -- I think that in the complaint you
20 will find allegations that the congressional investigation
21 has been obstructed, and I think you will -- but I think back
22 to your point that the statute doesn't require there to be an
23 official proceeding or an official investigation, meaning a
24 government investigation, in order for someone to be guilty
25 under this subsection (b). It says --

1 THE COURT: Liable.

2 MR. WALSH: -- whoever obstructs, attempts to
3 obstruct or in any way interferes with or prevents the
4 enforcement of this section shall be subject to the penalties
5 under the section. And I guess there are any number of ways
6 that they can be liable under this section according to the
7 allegations in our complaint, one of them being that they
8 undertook a sham investigation internally by hiring Donald
9 Alberstein who dragged the investigation out, delayed, paused
10 it so that the Lopez brothers could compete and coach at the
11 2016 Olympics.

12 THE COURT: With an effort to sidetrack anybody
13 else from investigating by purporting to have their own
14 investigation going on?

15 MR. WALSH: Absolutely.

16 THE COURT: Do you think you allege that in the
17 complaint?

18 MR. WALSH: Yes, sir. Yes, Your Honor.

19 MR. HUDSON: Your Honor, if I might just continue.
20 That really begins in paragraph 217, and that's absolutely
21 what we allege. What we allege is that this investigation
22 began in 2015. Mr. Alberstein was charging along and he
23 suspended his investigation. He did not contact the FBI
24 until months after the Olympics were over.

25 The notion that this is a private investigation

1 cannot be squared with what we allege, which is that -- and
2 as they told Congress under oath this year, they specifically
3 said under oath that they provided all this information to
4 law enforcement, state and federal law enforcement. That is
5 the very definition of an official investigation.

6 THE COURT: Well, but what you say is -- what you
7 call lies were intended to stop Congress and also to stop
8 public scrutiny in 221.

9 MR. HUDSON: That's correct, but that's simply the
10 smoke from the existing fire, and the existing fire is in
11 2016 when Donald Alberstein otherwise would have told the
12 FBI, he said, Oh, I can't do that, the Olympics are coming
13 up. That's why he writes a letter and says, Now that the
14 Olympics are over, I'm going to resume, right. So if you
15 take out the obstruction, the FBI would have been contacted
16 months earlier.

17 He also says that he told the Sugarland Police
18 Department, and that obstruction in 2018, the USOC and USAT's
19 head were on the chopping block. Those hearings were
20 designed to determine whether to shut them down as entities.
21 The very purpose of those hearings was: Are we going to
22 reform the USOC? The reason that Steven McNally said what he
23 said was because otherwise Congress was going to take their
24 head off, right. That's whole reason that he lied about what
25 they did. That's -- that's our allegation. So we have

1 multiple obstruction about multiple investigations throughout
2 a multiyear period.

3 THE COURT: Understood.

4 MR. HUDSON: Thank you.

5 THE COURT: Thank you. All right. Who is next?

6 MR. MARKS: Your Honor, Josh Marks on behalf of the
7 Lopez brother defendants. I'm going to start off with --
8 well, first of all, I believe there is six claims left
9 against the Lopez brothers.

10 THE COURT: I have Claim 3, Claim 5, Claim 8, Claim
11 10, Claim 13 all against Steven Lopez and Claim 15 against
12 all defendants. Is that what you have?

13 MR. MARKS: Yes.

14 THE COURT: Very good.

15 MR. MARKS: Nice to start off on the same page as
16 you. However, let me start with Number 15, which is the RICO
17 claim. I am unsure if the Lopez brothers are intended to
18 still be in the RICO claim.

19 THE COURT: Well, stop there.

20 MR. MARKS: Okay, because I do note they were
21 dismissed from the obstruction claims, and, of course, the
22 RICO claim is -- you know, the essential premise there is
23 that there is an enterprise that is engaged in obstructing,
24 you know, the governmental investigations. However, one of
25 the root requirements and one of the elements of a RICO claim

1 is that each defendant has to materially participate in the
2 enterprise. And, of course, when we get to those allegations
3 in the complaint, and there is a separate heading for that,
4 that all talk about the U.S. Olympic Committee or the USAT
5 members obstruction activities, of testifying in front of
6 Congress or not, you know, delaying investigations. There is
7 nothing about the Lopez brothers themselves. You know, the
8 only thing there is is that the Lopez brothers benefited or
9 the goal is to benefit them, but there is -- there is no
10 allegation of actual activities of the Lopez brothers in
11 connection with the enterprise itself.

12 THE COURT: Why don't we stop there. That's a very
13 important point. Go ahead. And you can remain.

14 MR. HUDSON: Thank you, Your Honor. This is Ryan
15 Hudson for the plaintiffs. Two points really. The first is
16 that the enterprise requirement for each defendant's
17 culpability under the George case, even a bit part would
18 suffice. So it's a much lower standard than the defendants
19 have represented.

20 Certainly the Lopezes are the very focus of the
21 Lopez enterprise. Without them competing and being paid per
22 diems, which we allege and being flown around the country,
23 there would be no racketeering, this case would not exist.
24 This case is the Lopez case.

25 So the notion that the Lopezes are absent from this

1 claim is a little bit puzzling to us. They certainly were
2 involved. They were the ones committing the acts that needed
3 to be obstructed. The investigation was about them. So the
4 notion that they were not involved doesn't hold water.

5 The second argument I would make is even if you
6 don't think they're part of the enterprise, they can still be
7 liable under 1962(d), which is the RICO conspiracy claim, and
8 I think at a minimum, the fact that they are the ones again
9 the subject matter of the investigation, they're the ones
10 benefiting from this, they would be the focal point of that.
11 I think the case law draws a much lower burden of proof and
12 related to that is simply we don't have access to their
13 e-mails. We don't have access to their records. We don't
14 have any way to know what was communicated or not
15 communicated.

16 THE COURT: But at least with regard to a
17 conspiracy, though, do you not have to at least allege some
18 kind of conduct that participates in the conspiracy other
19 than just saying this is all about them, even one act of
20 participation?

21 MR. HUDSON: Certainly, I think you have to say
22 that they're involved, but I think the idea that the Lopezes
23 were not involved in the enterprise -- that was the purpose
24 of the enterprise was to allow them, the Lopezes, to go
25 compete in the Olympics and to cover up the investigation

1 about them is a stretch.

2 I suppose after discovery it might turn out that
3 they had no idea that all these people were doing all these
4 great things to help them. We might not prevail after
5 discovery, but I think this goes back to the legal standard,
6 and we're not at 9(b). That was established in Robins in
7 2002.

8 THE COURT: Right.

9 MR. HUDSON: 9(b) does not apply to any nonfraud
10 RICO claims. And so our -- our allegation is that they were
11 involved, and we need discovery to find the e-mails and the
12 documents to confirm that.

13 THE COURT: Well, of course, if you don't plead it
14 properly under the applicable standards --

15 MR. HUDSON: That's true.

16 THE COURT: -- and then you generate evidence
17 during discovery. I just granted an amended pleading four
18 weeks before trial, so --

19 MR. HUDSON: That's fair, Your Honor, and if you
20 don't that we've plausibly --

21 THE COURT: No, I don't know. All I'm saying is
22 that it's not necessarily the end of things.

23 MR. HUDSON: That's true.

24 THE COURT: At each stage we need to have claims
25 that are properly pleaded under the applicable standards, and

1 those may not be there at first, but they may be generated at
2 a subsequent date. I'm not saying you can or can't do that.
3 It's just whatever I recommend at this point. And by the
4 way, remember, it is a recommendation, and you guys could be
5 doing this all again.

6 MR. HUDSON: No, your point -- your point is well
7 taken, and I certainly acknowledge the argument. I think
8 that the enterprise is very solid against the other three
9 entities. I do acknowledge that there is some -- some weight
10 to the argument that, well, you don't have any documents.
11 USA Today is not saying that the Lopezes were involved and
12 they didn't testify in front of Congress. And to the extent
13 that you think we haven't gotten there yet, I would
14 acknowledge that the other defendants are stronger.

15 THE COURT: Understood. All right, go ahead.

16 MR. MARKS: And then in addition, of course, the
17 1962(d) claim to the extent it does exist, there is just no
18 allegations of any kind of agreement that was made between --

19 THE COURT: Yeah, I think that's part and parcel of
20 what just argued, okay.

21 MR. MARKS: So I think they should be out.

22 So let me switch gears then. As to the other
23 claims against the Lopez brothers is, and actually it's just
24 at this point Steven Lopez is a defendant as to the rest of
25 the claims. The statute of limitations is the controlling

1 impediment to the plaintiffs moving on past the Rule 12(b)
2 stage.

3 And as you've been told, four of the claims against
4 the Lopez brothers arise under the TVPA. That's Numbers 3,
5 5, 8 and 10.

6 THE COURT: Yeah, just remember, Steven only. You
7 said the Lopez brothers.

8 MR. MARKS: Yeah.

9 THE COURT: I'm sure Jean wouldn't want you to be
10 so broad even if he does love his brother.

11 MR. MARKS: So it's just as to -- it's a hangover
12 from the RICO claim.

13 THE COURT: Sure.

14 MR. MARKS: So as to those claims, they are -- they
15 can be dealt with categorically because they're effectively
16 the -- both pairs of claims, Numbers 3 and 5, is by
17 Ms. Joslin, and Counts 8 and 10 are by Ms. Means, and they're
18 for the same things. They're for -- it's the forced
19 services/labor claim and the sex trafficking claim under the
20 TVPA, but, you know, of course, they're all enforced through
21 the private remedy of section 1595(c).

22 And as a result, because it goes through that one
23 remedy, the statute -- the same statute of limitations
24 argument applies equally to all four claims. And, of course,
25 the key here is that prior to December 23, 2008, there was no

1 explicit statute of limitations in Section 1595(c). Instead
2 the statute of limitations was a more generic four-year
3 statute of limitations under 28 U.S.C. Section 1658(a).

4 And, you know, there is no dispute that on December
5 23, 2008 that changed. Congress enacted Section 1595(c) and
6 put a ten-year statute of limitations into effect.

7 So the question for Mr. Lopez is, are there any
8 acts fairly alleged, plausibly alleged that occurred after
9 December 23, 2008, first of all, and we believe the answer to
10 that question is no because you have to do two things. You
11 have to look at the allegations of the complaint and you also
12 have to question are they -- are they fair allegations of the
13 substantive violations under the TVPA.

14 As to Ms. Joslin, she alleges that Steven Lopez
15 demanded sex from her in April 2006 to coach her in the
16 German Open, and that's at paragraphs -- I'm sorry, 605 to
17 621. That and -- that obviously proceeds the statute of
18 limitation date, so the four-year statute would apply to that
19 situation.

20 And for purposes of my argument, I'm going to --
21 let's assume that would have violated one of the substantive
22 statutes under the TVPA, but the other allegations are a lot
23 different. There are other allegations past that date, one
24 by Ms. Joslin indicate that Lopez continued to have sex with
25 her after -- for the remainder of her Taekwondo career, but

1 there is no dates attached to that particular allegation.
2 That's in paragraph 622. So that doesn't help discern
3 whether there is conduct after the key date here.

4 And there is also an allegation that Ms. Joslin
5 last had sex with Steven Lopez in 2010, but again, it's --
6 it's not tied to --

7 THE COURT: What paragraph?

8 MR. MARKS: That is paragraph 624.

9 THE COURT: Okay.

10 MR. MARKS: Again, it's not -- it's not tied to any
11 competition, it's not tied to coaching, it's not tied to
12 anything. And so just -- and I don't -- you know, just the
13 bare allegation, and no pun intended, of sexual activity
14 without connecting it to competition, to coaching, to
15 something associated with her Taekwondo career again
16 doesn't -- doesn't do it, doesn't nudge it across the line of
17 plausibly stating an act that occurred after 12/23/08 that
18 violates the substantive TVPA statutes.

19 THE COURT: Right, it's not there. So that one
20 paragraph is very troublesome the way you have phrased it
21 because it means absolutely nothing. How do you address
22 that? 624, two adults having sex. That's all you say, two
23 adults had sex in 2010. That's the allegation. Mr. Marks
24 makes a good point. What does that mean?

25 MR. WALSH: Well, I think in the context of our

1 complaint and the allegations therein, the -- the claim is
2 that in order for Gabby to continue training, competing,
3 getting coaching, in order to be involved in her sport,
4 beginning in 2006 in Bonn, she was coerced into having sex
5 with Steven whenever he wanted.

6 The --

7 THE COURT: Why don't you say she was last coerced
8 in 2010? I mean, it's almost like -- I would read that as
9 saying unfortunately we think this might be consensual, but
10 we've got to put in in any way in order to get it within some
11 kind of limitations period. Two more words, three more words
12 would make a fundamentally different allegation. Is there
13 any explanation to that?

14 MR. WALSH: Well, Your Honor, and I don't want to
15 bring up a sore subject, but to the extent there are
16 deficiencies, we believe we can cure them through amendment,
17 and maybe this is an instance where we can do that.

18 The -- if the language in that particular paragraph
19 is unclear or not specific enough, I believe that you get to
20 the same place by reading the complaint as a whole. The
21 claim is and the facts support that Gabby continued to have
22 sex with Steven during her time competing in sport. She did
23 that from the time she started in 2006 until she left the
24 sport in 2010.

25 THE COURT: Okay, yeah, but you say she left the

1 sport in 2010. Again, if she left in May in 2010 and this
2 happened in June of 2010, that's a significant missing
3 detail, wouldn't you agree?

4 MR. WALSH: Yes.

5 THE COURT: She left the sport -- let's say she
6 left the sport in May and she has sex with him in June.
7 That's clearly not going to be an allegation in support of
8 any coercion in order to compete because she wasn't competing
9 at all. She wasn't having sex for a benefit whatsoever.

10 MR. WALSH: I do see what you're saying and to that
11 extent the allegation isn't clear.

12 THE COURT: Yeah. I mean, specificity is pretty
13 important in some context, okay.

14 MR. LITTLE: Your Honor, if I may, John Little for
15 the plaintiff. We're alleging this relationship, for lack of
16 a better term, started when Gabby was competing
17 internationally. If Gabby wanted to continue competing
18 internationally, we're saying the price you have to pay, the
19 price she had to pay in Taekwondo to compete for the
20 USOC-paid coach Jean Lopez was to sexually service the Lopez
21 brothers.

22 THE COURT: Clearly you've alleged that, I know
23 that.

24 MR. LITTLE: Right. So that continues all the way
25 through the end of her sexual relationship and her Taekwondo

1 career, which are the same time. So the way I interpret the
2 argument here is just because we didn't plead every time that
3 she was coerced into having sex with Steven Lopez with a
4 specific date and a competition to anchor it to. She's in
5 Houston with these guys all the time.

6 THE COURT: Okay. Well, if you actually say
7 somewhere else, beginning in 2006 and ending in 2010 that
8 that conduct occurred and then that allegation said she last
9 had sex in 2010, that's one thing. Do you say that? I'm
10 looking for it and I don't see it.

11 MR. MARKS: Your Honor, what's particularly
12 relevant, Your Honor, is that -- I mean, this is a 100, what,
13 70 -- 190 page document with, you know, incredible
14 specificity on many of the allegations. And when it comes
15 time to this very key allegation, you have a very -- you have
16 a very -- very distinct disparity in specificity of
17 allegations. When they want to say that Gabby was involved
18 in a -- was forced to have sex in response to being able to
19 be coached in Bonn, they have no problem saying that.

20 THE COURT: 778 comes close by the way, in case you
21 want to look.

22 MR. MARKS: But I think we're getting -- Your
23 Honor, we're getting to the difference between, well, let's
24 just look at the overall tenor of something versus a
25 well-pleaded allegation.

1 THE COURT: I agree, but I do have to take all the
2 allegations together and in 778 here is the allegation.
3 Lopez -- Steven Lopez recruited, enticed, transported Gabby
4 to various tournaments and training centers between 2008 and
5 2010, benefited from her labor and services knowing or in
6 reckless disregard to the fact that by means of force, fraud,
7 coercion, the combination of such means would be used to
8 force Gabby to engage in commercial sex acts.

9 So it appears to allege that that's occurring
10 between 2008 and 2010 and then -- I still don't like the
11 allegation, I'll have to see what that means as a matter of
12 law, but I understand what you're arguing.

13 MR. MARKS: And I think under Iqbal this kind of
14 very generic almost conclusory type pleading isn't enough;
15 that you -- that I believe the plaintiffs are in possession
16 of facts table to articulate and allege --

17 THE COURT: Well, certainly they're in possession
18 of whatever knowledge Gabby has.

19 MR. MARKS: Correct.

20 THE COURT: Since it's their client.

21 MR. MARKS: Correct.

22 THE COURT: Okay.

23 MR. MARKS: So our contention is that with respect
24 to Gabby. And then also -- the same thing happens with
25 respect to Ms. Means as well. There are allegations that Mr.

1 Lopez was (inaudible) Ms. Means during a USAT event in 2006.

2 That's -- that's paragraphs 673 to 674.

3 THE COURT: Is her first name used or last name
4 used in this allegation?

5 MR. MARKS: Amber Means is her full name.

6 THE COURT: Do you refer to Amber all the time?
7 Okay, go ahead.

8 MR. MARKS: I can -- if that will be easier, I'm
9 happy to. So there is -- there is that allegation, but
10 again, there has been more nonspecific allegations of the
11 same nature that we just talked about, about -- paragraph 682
12 to 83 talks about Ms. Means having oral sex with Steven Lopez
13 on a date in late 2007; that generically they had, you know,
14 sexual relations in Houston in February 2008. They had an
15 open sexual relationship in March of 2008. And that's at
16 paragraph 685.

17 So again -- and then there is an allegation that
18 there was sex at various sanctioned events in several states
19 and countries in 2008, but again, no specificity as to the
20 exact date, and December 23, 2008 is a critical date. So
21 they need to allege it past that date and that's at paragraph
22 69.

23 THE COURT: And she left the sport -- and when did
24 she leave the sport? It was before the February 23 incident,
25 I assume?

1 MR. MARKS: Yeah, yes. And in 2013 they allege
2 that Steven Lopez tried to kiss her at -- at a party.

3 THE COURT: Very good.

4 MR. MARKS: But I don't think that is -- that
5 particular thing is the kind of thing that's governed by the
6 TVPA in terms of -- because it's unconnected to training,
7 coaching, anything like that.

8 So the next question is: Can you apply then the
9 ten-year statute of limitations that went into effect on
10 December 23, 2008 to the set of events? And that question is
11 answered right on point by Abarca v. Little, which is a case
12 that we provided to you. It's District of Minnesota. There
13 is not a lot of case right on point as to the expansion of
14 this statute of limitations. There is a number of cases that
15 are helpful because when Congress expanded the statute of
16 limitations, it also expanded the defendants, you know, to
17 beneficiaries of these acts too.

18 In connection with that expansion, the Courts have
19 said you can't apply those retroactively. That's the Tatulio
20 (ph) case and the Valez (ph) case that has been cited to you
21 by some of the other defendants.

22 But Abarca analyzed it under the Landgraff vs. UCI
23 (ph) framework, which is the Supreme Court's framework for
24 analyzing whether something is retroactive or not, and they
25 concluded that, first of all, Congress didn't indicate a

1 specific intent to retroactively apply this. And then
2 secondly, they concluded that since the statute of
3 limitations was expanded, it effectively took away a defense
4 that was available to the defendants and, therefore,
5 increased the liability of the defendants consistent with the
6 Landgraff vs. UCI case.

7 The responsive case that we get from plaintiffs is
8 called Doe v. Senick (ph). It's a district of -- District of
9 Columbia case, but it didn't -- didn't apply with the statute
10 of limitations provision that we're talking about here.

11 The other thing I want to point out to you that
12 Abarca is reinforced by the Hughes Aircraft case, Your Honor,
13 and that's a subsequent U.S. Supreme Court case in 1997 that
14 also dealt with retroactive -- retroactivity. It -- the
15 Hughes Aircraft case didn't apply -- wasn't about a statute
16 of limitations change. It had to do with the Federal False
17 Claims Act and changes to the Federal False Claims Act that
18 went into effect.

19 But what's important about it is in the Abarca
20 case -- I'm sorry, in the Hughes Aircraft case, Congress
21 effectively took away a defense that was available to a
22 defendant as well. In the Hughes Aircraft case, it used to
23 be that a defendant in a False Claims Act case couldn't be
24 sued by a relator if the government new and had information
25 that there was fraud on the government. And I'm sure you

1 probably had to defend a few of those in your time at the
2 U.S. Attorney's Office, but Congress took away the defense
3 and changed the relator statute during that timeframe.

4 And the Supreme Court said, taking away a defense
5 is the kind of thing that -- that doesn't allow for
6 retroactivity. And so it gives us some really good insight
7 as to really what the result should be here on expanding the
8 statute of limitations.

9 So since the four-year statute applies, I don't
10 think anyone here claims that there is -- that this action
11 was timely commenced. It's all dependent upon the ten-year
12 statute of limitations, the applicable one.

13 The same analysis holds true for the last claim
14 against Steven Lopez. That's the claim under Section 2255.
15 Again, March 7, 2013 is the critical date for that because
16 the statute of limitations was expanded on that date from six
17 years generally to ten years. And if you apply that, the
18 last -- the last act of Amber Means for the statute of
19 limitations that we believe exists was the 2006 allegation.
20 That expired with the six-year statute of limitations in 2012
21 since she was not a minor at that point.

22 But even if you consider other acts that she has
23 alleged in 2007 and 2008 as triggering the substantive
24 provisions, that those statute of limitations, the six-year
25 statute would have expired at the latest in 2014 for those

1 acts. And so Section 2255 claims are barred.

2 I know I went through it pretty fast. It's in the
3 briefs, but I think I've pretty well laid it out.

4 THE COURT: Very good. Anything we didn't address
5 you may follow up on if you wish.

6 MR. WALSH: Your Honor, Larkin Walsh for the
7 plaintiffs. I think this is also covered in our briefs and
8 the statute of limitations are -- are like a puzzle that
9 require laying, you know, different versions of the statute
10 on top of each other, and I think -- I think our brief does a
11 good job of covering it, so I won't read from the brief
12 unless --

13 THE COURT: No, that's fine.

14 MR. WALSH: Okay.

15 THE COURT: And it's a very technical area which is
16 not really amenable to (inaudible).

17 Okay. Do we have SafeSport left? I assume you're
18 going to focus some comments on the obstruction, which I
19 think isn't necessarily maybe something that qualified
20 immunity was continued to protect somebody from instruction,
21 right.

22 MS. DAVENPORT: Judge, we're going to get
23 Ms. Grossman back on.

24 THE COURT: Okay.

25 MS. DAVENPORT: I don't want him to get started.

1 THE COURT: Did you guys know she was on?

2 UNIDENTIFIED SPEAKER: Yes.

3 THE COURT: Okay.

4 MS. DAVENPORT: That beep was her getting
5 disconnected.

6 THE COURT: That's fine. Is that going well, as
7 far as everybody knows? So at the end of this we can take
8 comments even off the record if you want, okay.

9 UNIDENTIFIED SPEAKER: Did you have a question?

10 THE COURT: Not right now I guess. I'll reserve
11 that one.

12 MS. DAVENPORT: Ms. Grossman, are you there?

13 MS. GROSSMAN: Yes.

14 THE COURT: Okay. Mr. Connelly, please just make
15 your appearance for the record.

16 MR. CONNELLY: Yes, Your Honor. Sean Connelly on
17 behalf of the U.S. Center for SafeSport.

18 THE COURT: Thank you.

19 MR. CONNELLY: Your Honor, as the Court noted in
20 its order granting a stay, Document Number 168, the Center
21 for SafeSport did not even exist until March of 2017. It has
22 been in existence for less than two years. Obviously, unlike
23 every other defendant and every other party to this case,
24 could not have done anything legally cognizable to injure
25 anybody's interest prior to March 2017.

1 The Center operates now under the SafeSport
2 Authorization Act, and that's an amendment to the Ted Stevens
3 Amateur Sports Act. And in particular, Your Honor, under
4 Title 36 U.S.C. 220541 Congress has set forth the Center's
5 statutory mandate, and particularly under 541(a)(4), it is
6 charged with the investigation and resolution of allegations
7 of sexual abuse in violation of the Center's own policies.
8 And part of what the Center did when it got up and running is
9 to establish policies and to govern protection against sexual
10 abuse in sports.

11 In March of 2017, the Center began investigating
12 scores, hundreds, and now according to plaintiff's own
13 calculation, and correctly so, has now taken in its 1000th
14 complaint in less than two years involving at the time 47
15 national governing bodies, as well as Paralympic sports
16 authorities. So it investigates players of abuse in
17 gymnastics, figure skating, diving and Taekwondo and every
18 other national governing body, and it's just heard its 1000th
19 complaint.

20 Congress has also provided in the SafeSport
21 Authorization Act, this is 541 -- 220541(a)(5) that SafeSport
22 has to engage in fair process and provide notice and
23 opportunity to be heard in making its eligibility decisions.

24 SafeSport is functioning as a quasi judicial
25 branch. It has to resolve independently complaints on the

1 one hand by alleged victims of sexual abuse and on the other
2 hand determine whether those claims are established and
3 violate policies in sport, and if so, what is its sanction.
4 It is a pure quasi judicial entity in terms of resolution of
5 allegations of sexual abuse.

6 THE COURT: Any kind of limitations period they
7 operate under at all?

8 MR. CONNELLY: Any kind of --

9 THE COURT: Limitations period that they would
10 operate under.

11 MR. CONNELLY: I don't know limitations period.

12 THE COURT: Well, in other words, if SafeSport
13 believed allegations from 2008 were true after some
14 investigation and the perpetrator of those is coaching in
15 2019 --

16 MR. CONNELLY: Yes.

17 THE COURT: -- which would be probably to the
18 public something wrong with that.

19 MR. CONNELLY: No, no, I understand your question.
20 It's appropriate. I apologize for being a little slow on
21 that.

22 THE COURT: That's all right.

23 MR. CONNELLY: The SafeSport code provides that
24 there is no statute of limitations.

25 THE COURT: Okay.

1 MR. CONNELLY: And the mandate under the SafeSport
2 code, it's their own code they promulgated, is that they
3 evaluate current fitness to participate in sport.

4 THE COURT: Very good.

5 MR. CONNELLY: So, no, so the allegation comes in.
6 Now, there is a complication, however, that the standards
7 that govern claims of abuse were only established in 2017.
8 So one thing, for example, that SafeSport has done, and it's
9 in the code and the code is an exhibit to our motion to
10 dismiss, Exhibit 105-1, and I think we agree that the code is
11 properly before this code on the motion to dismiss. So 105
12 has the code, the current code.

13 In that code it says current fitness is a standard,
14 statute of limitations doesn't apply, but we're not going to
15 retroactively impose a new standard. So, for example, it's
16 more complicated -- in 2017, for example, SafeSport has said
17 there are certain cases where even a, quote, consensual
18 relationship between athlete and coach is inappropriate.

19 THE COURT: Sure, but quid pro quo would be
20 wrongful under any standard.

21 MR. CONNELLY: Well, it's tricky. I mean, in this
22 case, for example, the state court has to look back and say
23 what was the code in effect at the time. And so SafeSport
24 will try to impose the national governing body's code. And
25 if the conduct is what happened in '97, mores have changed in

1 '97, and SafeSport has gone much more proactively than people
2 and promptly so in this moment. There is a greater awareness
3 of things in 2017 and 2018 than there were in '96 and '97.

4 But certainly in this case, to cut to the chase, if
5 there is nonconsensual sexual allegations going on, that is a
6 violation of state criminal code.

7 THE COURT: Well, would coercion fall within that
8 nonconsensual order?

9 MR. CONNELLY: Yes, I think it would. Well, maybe
10 not in terms of power imbalance, and I don't want to quibble,
11 because these allegations would violate state criminal code
12 in our view and they would violate standards of the sport at
13 the time. So I'm not -- I'm just saying that it's trickier
14 in some cases --

15 THE COURT: Understood.

16 MR. CONNELLY: -- when SafeSport wants to put
17 proactive policies and say that, even if it's, quote,
18 consensual between a 22-year-old swimmer and a 32-year-old
19 coach, there is a power imbalance there that may make that
20 inappropriate in terms of sport. And I'm just saying in
21 terms of -- you asked the question of was there a limitations
22 period. There is not, but applying the standard is sometimes
23 trickier when you go way back.

24 In any event, SafeSport, it's undisputed --

25 THE COURT: Well, if SafeSport was just created in

1 2017, the oldest standard it has ever had is 2017, right?

2 MR. CONNELLY: Correct, but it applies the
3 preexisting standard. So if there is an allegation that
4 something happened wrong in 2008, SafeSport obviously
5 couldn't have done anything about that until '17. But we're
6 looking at current fitness, and the question is, Did that
7 violate any standard applicable in 2008 such that it affects
8 their current fitness?

9 THE COURT: Were there standards applicable in
10 2008?

11 MR. CONNELLY: It would be the standards of the
12 national governing body or state criminal laws.

13 THE COURT: Did they each have standards, each of
14 the NGBs?

15 MR. CONNELLY: Yes, but as you go further back, I
16 mean, some were vaguer and some were better than others,
17 quite frankly, but that's the inquiry that SafeSport has to
18 go into when you're looking at an old pre-'17 conduct.

19 THE COURT: And whose law do you apply if it's not
20 a standard of the NGB? If you're going to look at the state
21 law, do you apply the state in which the conduct occurred?

22 MR. CONNELLY: Yes.

23 THE COURT: All right.

24 MR. CONNELLY: And ideally you have an NGB code.
25 You might say that, you know, if something happened in figure

1 skating in 2014, that in 2014 U.S. Figure Skating had a code
2 that said this is wrong and SafeSport will apply that code if
3 you're looking back. It's just a little trickier, though,
4 when you're looking at historical conduct.

5 THE COURT: Complicated.

6 MR. CONNELLY: But Your Honor's question, though,
7 in terms of limitations period, there is no limitations
8 period. We're looking at current fitness, but we're not
9 going to retroactively apply a new standard to conduct that
10 could be 20 years old.

11 So in any event, so that's what -- it has taken in
12 1,000 complaints at this point, charged with the resolution
13 of this. And this is important I think for the immunity
14 argument and obstruction, everything else. That as
15 functioning, Congress has told it to be independent and to be
16 a quasi judicial body charged with the, quote, resolution of
17 complaints. And Congress has also said in 22541(b) and (c)
18 that SafeSport in its discretion may use an arbitral body.

19 THE COURT: Okay, but so no appeal from the final
20 decision of the SafeSport?

21 MR. CONNELLY: Well, the appeal goes to an arbitral
22 body.

23 THE COURT: On the discretion of SafeSport or is
24 that mandatory?

25 MR. CONNELLY: That's mandatory. That's under --

1 well, it's not mandatory in the statute. The statute says
2 SafeSport in resolving complaints and allegations may in its
3 discretion utilize an arbitration body, and SafeSport in its
4 codes and procedures, again, 105-1 in this Court, ECF, has
5 said that the procedures are that we do an investigation and
6 come to a decision.

7 And let's say in this case it's undisputed that in
8 April of 2018 SafeSport imposed a lifetime ban on Jean Lopez.
9 That lifetime ban -- and we'll get into some complications on
10 that. That lifetime ban triggered his right under the
11 SafeSport code and procedures to go to an arbitration panel.

12 THE COURT: So SafeSport has bound itself to an
13 arbitration process?

14 MR. CONNELLY: Under our code, yes, we have to
15 follow our code.

16 THE COURT: What section is that?

17 MR. CONNELLY: That would be in 105-1. Let me get
18 the exact cite for Your Honor.

19 THE COURT: Oh, man, your reputation is you can
20 cite thousands of pages for the record.

21 MR. CONNELLY: I know, but a SafeSport code is
22 pretty complex. But in any event, the cite I gave Your Honor
23 in the statute is that 22541(c)(1) gives SafeSport the
24 discretion utilize a neutral arbitration body.

25 THE COURT: Right.

1 MR. CONNELLY: And SafeSport has exercised that
2 discretion in its code, and that would be in 105(a) -- if I
3 can sit down and give it to you when I stand back up, but
4 it's in 105-1.

5 THE COURT: No, it's fine. I don't need it right
6 now, but as long as you tell me that they have bound
7 themselves to an arbitration that's all I need to know.

8 MR. CONNELLY: Absolutely.

9 THE COURT: All right.

10 MR. CONNELLY: I don't think there is any dispute
11 that, and they may say that we shouldn't have done that.

12 THE COURT: Nor is it maybe relevant. It was just
13 interesting.

14 MR. CONNELLY: Yes.

15 THE COURT: Okay.

16 MR. CONNELLY: And the arbitration body in the
17 SafeSport code is JAMS. So it's JAMS arbitrators --

18 THE COURT: Okay.

19 MR. CONNELLY: -- that sit around the country. And
20 so if -- in this case undisputed that in April of 2018
21 SafeSport imposed a lifetime ban on Jean Lopez. Also on
22 dispute --

23 THE COURT: Well, that's not provisional?

24 MR. CONNELLY: No, that was a lifetime ban. And
25 then in -- in May of '18 imposed an interim suspension on

1 Jean -- on Steven Lopez and then followed that up in
2 September of '18 with a lifetime ban of him.

3 THE COURT: All right, very good.

4 MR. CONNELLY: So undisputed in 2018 -- and this is
5 in their complaint, I think it's in paragraph 20, it's
6 throughout their complaint, that undisputed in 2018, lifetime
7 ban April of Jean, lifetime ban later in '18 of Steven.

8 Now, under the rules of SafeSport, I think again
9 undisputed, that triggered the Lopezes' right, separate
10 rights, separate proceedings, but each person had a right to
11 an arbitration under JAMS.

12 Jean Lopez filed for an arbitration and the
13 gravamen of the complaint against SafeSport is that in August
14 of 2018 after the plaintiff's counsel said -- and their
15 clients had fully cooperated with the internal investigation
16 of SafeSport. SafeSport relied on it, and in their complaint
17 they say -- produced 125-page report finding the claims
18 substantiated and banning Jean Lopez for life.

19 That triggered, as I said, his right to a JAMS
20 arbitration. In this case, he was one of the last people
21 that had a right to an arbitration before three arbitrators.
22 SafeSport, given the cost of burden, it's now one arbitrator,
23 but at the time he had a right to a three-arbitration panel,
24 three-member panel. It filed for that arbitration.

25 THE COURT: And is SafeSport bound by the decision

1 of the arbitration?

2 MR. CONNELLY: Yes. And both sides are. I think
3 and the Amateur Sports Act is clear on this that there is no
4 private right of action. I think it would be maybe the FAA
5 or something, but I don't think there is any judicial review
6 on eligibility decision. And case law is very clear in that
7 and that's very important in terms of --

8 THE COURT: So even if SafeSport was convinced and
9 went out on a limb and made it a record that these
10 allegations were true and an arbitrator put them back in,
11 USOC has to accept that?

12 MR. CONNELLY: Not USOC. I think -- well, yeah,
13 there is a question on that actually because in this case the
14 arbitration panel came down and vacated the decision, and
15 that's -- that's again in Document 200. We've shown what
16 happened because their conditional amendment motion referred
17 to this.

18 So just quickly chronology. April, suspension. In
19 August of 2018 of Jean, SafeSport -- and this is what gave
20 rise to the complaint -- SafeSport after the plaintiff
21 said -- counsel said our clients are not going to testify or
22 provide any testimony in that proceeding, SafeSport said
23 that's going to hurt our ability to carry the burden. It's a
24 preponderance burden in arbitration. We stayed -- SafeSport
25 made the decision to stay the arbitration and stay the

1 suspension.

2 Now, the arbitrators -- because USA Taekwondo at
3 the time had still kept the suspension in effect on Jean
4 Lopez, the arbitrators said we're not going to allow you
5 to -- we're going to make you go forward. We're going to
6 make you proceed even though -- and this is what we had
7 argued in a motion to dismiss. It was our judgment that
8 we're not going to be able to carry our burden without their
9 testimony.

10 And under the SafeSport rules, and this is again in
11 105-1, they don't have to testify subject to
12 cross-examination. It's a very trauma-induced system and
13 trauma-reflective system that they are allowed to testify
14 solely by questioning the arbitrator, with no cross or
15 anything else, and they don't have to. They're not required
16 to and we can't compel them to testify.

17 THE COURT: Are they required to testify in the
18 presence of the accused?

19 MR. CONNELLY: No. Actually, they can testify
20 remotely, and this is in the SafeSport where they can testify
21 remotely, not even in the presence, so no confrontation
22 rights. They can testify by video and remotely and the
23 arbitrators can see them on a remote video.

24 THE COURT: But do all parties have a right to be
25 there or can it just be the arbitrators?

1 MR. CONNELLY: No. I think under the -- you know,
2 they don't have to be in the same room, but I think all
3 parties have the right to -- you know, there is discretion
4 for the arbitrator, especially even more so would happen, and
5 it has happened, Your Honor, in cases of minors and child.
6 That's where it's really -- you know, and obviously there is
7 allegations that this abuse occurred while these plaintiffs
8 were minors, but, you know, there is no dispute they're all
9 adults now, but there are certainly protective measures in
10 place that can be taken to minimize the -- and there is
11 certainly no, as Justice Scalia would say, right to
12 face-to-face confrontation and cross-examination, absolutely
13 not.

14 But in any event, after the plaintiffs' counsel
15 said that their clients are not going to cooperate, at least
16 not in terms of testifying, SafeSport made the decision,
17 right or wrong, but in their judgment, in August, we don't
18 want to go forward, we want to stay this. We were told
19 again, I don't think there is any dispute, that wait for
20 their testimony in this case and then you can use that. And
21 we tried to do that. We tried to hold off the arbitration.

22 And in December the arbitration went forward over
23 our request to stay them, and the arbitrators in both Jean
24 and Steven, and they're attached as Documents 200, Exhibit 1
25 and Exhibit 2, in both cases overturned the Center's lifetime

1 bans. And in both cases said we've heard live testimony from
2 only one side.

3 The Center had presented the testimony of its
4 investigator and she testified and provided everything we
5 could to substantiate the allegations that led the Center to
6 impose a lifetime ban, but the arbitrators, the three judges
7 in the case of Jean Lopez and one retired federal magistrate
8 judgment, a state appellate judge in the case of Steven
9 Lopez, said that we've only heard live testimony from one
10 side under oath and subject to cross-examination, and we've
11 only heard hearsay testimony on behalf of the Center, and we
12 cannot find that the Center carries its burden of proof by a
13 preponderance, and, therefore, the Center lost its efforts to
14 uphold the lifetime bans. Arbitrators said they were not
15 proven by a preponderance, and, therefore, vacated the
16 lifetime bans of both Jean and Steven Lopez.

17 THE COURT: But you only -- I'm reading the
18 conclusion. You only used one person and one incident in the
19 allegation against --

20 MR. CONNELLY: Steven.

21 THE COURT: Okay.

22 MR. CONNELLY: And that was the allegation, and
23 it's not even a plaintiff. The party there is represented by
24 plaintiff's counsel, but it's not a named plaintiff, the
25 alleged victim in the Steven Lopez case.

1 THE COURT: But SafeSport had the discretion to
2 make this as broad as they wanted as far as the basis for a
3 decision to suspend or --

4 MR. CONNELLY: Correct, and Steven Lopez was based
5 on one allegation of a reporting witness that originally
6 cooperated and then said I'm not going to provide any
7 testimony in cooperation. Jean Lopez was based on three --
8 three named plaintiffs, three of the named plaintiffs who
9 refused to testify under advice of counsel and that's stated
10 in the arbitration decision.

11 THE COURT: I see 200-1. What's the other one you
12 said?

13 MR. CONNELLY: It would just be plain old 200.
14 That's actually 200-1 -- the way we had to file them under
15 restriction, Document Number 200 is our Exhibit 1 and 200-1
16 is our Exhibit 2.

17 THE COURT: All right, I got it.

18 MR. CONNELLY: So Document 200 is Jean Lopez.

19 THE COURT: I have that.

20 MR. CONNELLY: And there were three reporting
21 parties they're called under the Center's procedures and one
22 responding party. So Jean Lopez was charged with victimizing
23 three of the named plaintiffs and none of those three
24 plaintiffs testified. The Center's investigator testified at
25 length in terms of all hearsay, really. All she could offer

1 is hearsay. And -- you know, and even the arbitrator said,
2 you know, she would have liked to have even followed up with
3 them in terms of even if they didn't testify what's going to
4 happen, and under advice of counsel they didn't cooperate.

5 So that's the chronology and that's why we're being
6 sued here. And our point is, if we could be sued in this
7 case -- and the plaintiffs say repeatedly, the Center is
8 woefully underfunded, it's doomed to fail, it's going -- if
9 we could be sued in this case, one of a thousand, by a
10 reporting party and parties, what's going to stop a
11 responding party from coming and saying, you've gone too far,
12 you're suing for damages?

13 And that's precisely why, to preserve the quasi
14 judicial and quasi prosecutorial function. I think the
15 Center's hat goes from an adjudicator when it's resolving
16 complaints and it goes to kind of a quasi prosecutor when
17 it's trying to prove those complaints to an arbitral board.
18 If those decisions in both either hat are going to be
19 challenged, the Center might as well just be shut down.

20 THE COURT: You could face a crossclaim in this
21 case.

22 MR. CONNELLY: I think we could. And actually the
23 prevailing party in the arbitration could say you went too
24 far and there was no basis for this. And we're going to be
25 in the middle of this -- you know, I don't know what table we

1 sit at. I guess we're just right in the -- we're a
2 defendant, but we're -- but not just this case, Your Honor.
3 I mean, the more trouble -- we've been sued -- this is the
4 third case the Center has been sued in. I represent the
5 Center in two cases in Federal District Court of Florida both
6 by responding parties. This is the first time we've been
7 sued by a reporting party, but twice by responding parties,
8 and one was thrown out thankfully, another is still pending
9 on a motion to dismiss, but that's exactly why -- and those
10 weren't even damages suits. Those were arguments for
11 judicial review of a decision that we say is committed to
12 arbitration and is only reviewable if at all under the FAA,
13 and we would say not at all given the unique aspects of the
14 SafeSport Authorization Act.

15 But if we would be sued for damages here, it just
16 defeats the whole purpose of the Center's existence, and
17 we've relied on Tenth Circuit cases, Gutman (ph) in terms of
18 state medical board and then Fanasteel (ph) in terms of a
19 private arbitrator. And we're kind of in between. We're not
20 a federal actor, we're not saying we're a federal actor, but
21 we're certainly performing a federal mission, and -- under
22 the statute, and that's why we (inaudible) immunity. Also
23 there is no standing.

24 We're sued in five counts, counts -- by my Count
25 14, 15, 19, 20 and 21. 14 and 15 say that not only do they

1 disagree with what we did, but we're a federal criminal
2 actor, which is -- it's just offensive. I mean, you know,
3 doing -- and we've been sued, like I say, and a lot more
4 suspensions and a lot more adversarial -- I don't know that
5 the Center has ever been adversarial in this respect with a
6 reporting party. We've certainly been adversarial -- every
7 case I know we're adversarial with a responding party that
8 said you went too far. You gave me a lifetime ban without
9 notice and you applied the wrong standards. And with Your
10 Honor's question, this crime -- this event happened in 2010,
11 and, you know, there was no notice that what I did in 2010
12 was wrong in your ex post facto and we've got every possible
13 kind of claim by a responding party.

14 THE COURT: Couldn't Congress, though -- just
15 hypothetically, couldn't Congress have shielded SafeSport
16 from any conduct short of willful and wanton?

17 MR. CONNELLY: It could have and it did. And let
18 me just state that I don't think that's the test Your Honor,
19 with respect. And this is --

20 THE COURT: No, I'm just saying, it could have done
21 that.

22 MR. CONNELLY: It could have, and it shielded it
23 and there was a limitation of liability that they seized on,
24 220541(d)(1), which imposed a limitation on liability for
25 defamation, and it protects not just the Center, but any

1 applicable entity is the phrase they use, and that includes
2 any reporting party, any responding party, any organization,
3 anybody involved in the process.

4 And my point, though, Your Honor, is that that in
5 terms of defamation, much broader than just the Center, but
6 in terms of immunity law -- and the Supreme Court in 1967 I
7 think is one of the last rulings of the Warren court, Chief
8 Justice Warren in Pearson vs. Ray, said that there is
9 immunity for quasi judicial officers, and that was in a 1983
10 claim. And the argument was made that, no, 1983 would have
11 wiped out any immunity because Congress expressly provided
12 cause of action in 43 U.S.C. 1983 in the Pearson case.

13 And Chief Justice Warren, with only Justice Douglas
14 dissenting I think, 8 to 1, wrote that, no, that's not the
15 standard. You look at the function. What's the function of
16 being served, and it's a quasi judicial function, and we
17 construe 1983 even an express cause of action as not
18 overriding the immunity.

19 Here we have no express cause of action. To the
20 contrary, the act makes clear that there is no private cause
21 of action for any eligibility decision. So our argument is
22 that Congress never contemplated that the Center would be a
23 party being sued for damages by either side, and allowing
24 that suit would skew the decisional process.

25 If the Center has to go through each proceeding and

1 say what's going to happen if I do this and go too -- you
2 know, and make a decision in favor of the reporting party or
3 responding party, am I likely going to get sued, that's going
4 to skew the whole independence that Congress required here.

5 So we argue that there is immunity, that they don't
6 have standing; that the Center has done nothing to injure
7 them or to cause their injuries which all occurred years and
8 decades before the Center opened, and that the state tort
9 claims, Claims 19 through 21, are barred by immunity, but
10 also don't state a claim because we have no duty other than
11 to act fairly and impartially, no duty to either side. To
12 say that we have a duty to one side or the other would skew
13 tort law. And so, you know, it's the same thing, we don't
14 owe a duty -- we owe a duty to be fair and impartial to carry
15 out our federal mission, but not a duty to find in one side's
16 favor or how they would like us to find.

17 THE COURT: Thank you.

18 Mr. Hudson, one of the things you said at the
19 beginning and I cut my teeth on the old interpretation of
20 RICO, just like you did, because in my days as a judicial law
21 clerk in the late '80s RICO was a joke if anybody ever tried
22 to bring it in a civil case. One of the things you said was
23 that was in part true because of the overpleading. And to
24 the extent you want to gain public sympathy, I'm a little bit
25 weary of SafeSport being part of that potential overpleading

1 aspect of what we all are concerned about in RICO. So how
2 would you respond to that?

3 MR. HUDSON: Yeah, certainly, Your Honor. I think
4 the critical thing here -- there is several things to clean
5 up here. In paragraph 282 we specifically allege, quoting
6 Scott Blackman the former head of the USOC, SafeSport was
7 created in 2015. It had its first board meeting in 2016.

8 So SafeSport was in existence and already had its
9 first board meeting during the critical obstruction phase of
10 this case, and SafeSport functions as the offloader of the
11 liability, much like corporations try to create off-balance
12 sheet liabilities to make them go away, we allege that
13 SafeSport was created to sweep the allegation of sexual abuse
14 under the rug. And they are a critical actor in the shell
15 game that's being perpetrated here. The enterprise --

16 THE COURT: What's your support for that, though?

17 MR. HUDSON: Well, in part, paragraph 71, we quote
18 extensively the Deadspin article that SafeSport designed to
19 fail which contains extensive allegations tracing the entire
20 history of SafeSport, how it was created by the USOC, how it
21 was designed to fail because of the USOC is, how it has
22 failed because of the USOC. That is specifically
23 incorporated in paragraph 71 of the complaint.

24 Likewise, the critical allegations involving the
25 obstruction in 2016 and 2017, including the World

1 Championships, SafeSport had jurisdiction at that point. And
2 Mr. Alberstein's defense was, well, yeah, I investigated for
3 two years and then SafeSport was created, so I just gave him
4 the file and he's supposed to take -- you know, I gave them
5 the file and they took it over.

6 THE COURT: So in a word you're saying SafeSport is
7 a sham?

8 MR. HUDSON: Absolutely, yes. That's absolutely
9 what we're alleging. And that's not our -- we're not the
10 first to say that. And, you know, recent -- I mean, if you
11 want to get outside of the pleadings as SafeSport is, I mean,
12 the argument that you just heard would be a nice closing
13 argument, but none of this is in the second amended
14 complaint.

15 So I don't -- I don't honestly know what to do with
16 a lot of the arguments that are made.

17 THE COURT: Well, they will polish the arguments.

18 MR. HUDSON: Okay.

19 THE COURT: And I'm going to focus on legal
20 aspects.

21 MR. HUDSON: Sure. So, you know, we've been
22 conducting discovery and our case is look pretty good. And
23 if you want to get into that, I'm happy to get into that. I
24 don't intend to make arguments outside of the pleadings.

25 We also plead that the average ban -- or, I'm sorry

1 the average investigation takes 63 days. The Lopezes, it
2 took four years.

3 THE COURT: Well, not for SafeSport it didn't.

4 MR. HUDSON: No. Again, it, in '14, then
5 Alberstein gets involved in '15, then SafeSport gets involved
6 in '17, but it was over 17 months for SafeSport in comparison
7 to the average of 63 days. And this is all laid out
8 beginning in paragraph 217 of the second amended complaint,
9 all of the discrepancies that -- again, we're citing sources,
10 this isn't just our guesswork. We're quoting high-level
11 journalists who have reviewed a bunch of documents.

12 I mean, frankly, I don't feel like we're making
13 this up. This is --

14 THE COURT: But how do you overcome -- this is not
15 a legal argument, but judges are humans too. How do you
16 overcome a clean hands argument here that you actually
17 prevented -- I mean, did you not -- did your clients not
18 engage in the process because they believed it was all a sham
19 and it was going to hurt them?

20 MR. HUDSON: Right. So again, this isn't in the
21 pleading.

22 THE COURT: I understand.

23 MR. HUDSON: I mean, if we're going outside the
24 pleadings --

25 THE COURT: Well, yeah, I'll focus on what's in the

1 pleadings.

2 MR. HUDSON: Okay. But the reality of what
3 happened is we said take our depositions in this case.
4 Everybody else is going to take our depositions. That's the
5 live testimony. Delay -- delay the hearing until then. All
6 of this closing argument --

7 THE COURT: Wait a second, you actually encouraged
8 delaying the hearing?

9 MR. HUDSON: Yes.

10 THE COURT: Even though in other context delaying a
11 hearing is a bad thing; it's part of a conspiracy?

12 MR. HUDSON: We -- I mean, again, this is not --
13 this is not in the -- this is not in the pleadings. So what
14 we said was, you're going to be able to take our clients'
15 depositions. More importantly, the fact that you're taking
16 live testimony on an appeal is extremely weird. That is
17 unknown to any sort of legitimate legal system that I'm aware
18 of.

19 You take evidence at trial and then you have an
20 appeal about the evidence that was entered into the record.
21 You've also seized upon their divide and concur strategy of
22 we're just going to do one victim at a time and so it looks
23 great for the respondent because there is only one
24 allegation.

25 THE COURT: So during the investigation, were they

1 ever asked for sworn statements?

2 MR. HUDSON: You know, again, I'm not entirely
3 sure. I think that -- I think that they were. I know -- I
4 know for a fact that they talked to Dahlman and Alperstein.
5 I know that he reached out to them. I know that SafeSport
6 reached out to them. I know that we've pled that.

7 When you're using the phrase "sworn statements,"
8 I'm not sure that they were sworn. And that's part of our
9 allegation is the phrase that Senator Blumenthal used in the
10 Senate was these plaintiffs have been revictimized because
11 they have lived this hell for the last four years. That's
12 what's offensive. We agree that this is offensive.

13 What's offensive is making these people go through
14 this and never gathering the evidence and then having a
15 trial, which wasn't really a trial because we didn't have the
16 evidence. Now on appeal we're going to demand that you come
17 give testimony, and then when you don't, we're going to stand
18 up in court and accuse you of causing the problem.

19 THE COURT: So just so I know what I or
20 Ms. Grossman might be up against in the event some or all of
21 this case goes forward, you don't foresee any problems with
22 the defendants having access and gaining full testimony from
23 your clients in discovery if that were to occur?

24 MR. HUDSON: I mean, we'll cross that bridge when
25 we get there. I mean, we have not made -- again, I keep

1 saying it, but like none of this is in the pleadings. We're
2 at the motion to dismiss stage.

3 THE COURT: No, I understand, I understand.

4 MR. HUDSON: So I don't know what's going to
5 happen. We've told them that there is going to be a
6 deposition of our plaintiffs. I don't foresee you allowing
7 us to proceed on this case without giving a deposition.

8 THE COURT: Completely, and I can't foresee any
9 privacy or even privilege objections that you could possibly
10 raise. I mean, I don't see that.

11 MR. HUDSON: I'm not prepared -- I'm not prepared
12 to waive those now, but we'll deal with that when we get
13 there.

14 THE COURT: Okay.

15 MR. HUDSON: But there will be depositions of our
16 plaintiffs. Again, our argument is a procedural one. It's
17 not a substantive one that you guys got it wrong. It's a
18 procedural argument. SafeSport needs to be reformed. You
19 know, I'll let Ms. Walsh cover the rest of this.

20 THE COURT: Okay.

21 MR. HUDSON: If I may, just quickly on the RICO
22 allegation, again, the whole point of RICO is an enterprise
23 liability. SafeSport was integral to the enterprise, and the
24 enterprise was to obstruct, to interfere and to lie to
25 Congress, and SafeSport was used as the escape hatch, it was

1 used as the safety valve to say, no, that's not our problem,
2 that's SafeSport's.

3 So to create remedies that are meaningful, you have
4 to include SafeSport in the conversation because that's what
5 they were created for. Under the defendants' very theory of
6 this, they can't do anything anymore because SafeSport has
7 all the jurisdiction.

8 So given that we allege conduct after the creation
9 of SafeSport in 2015, after SafeSport had its first board of
10 directors meeting in 2016, after SafeSport opened its doors
11 in March of '17, SafeSport is right in the thick of this,
12 right.

13 THE COURT: So do you think there is any --
14 anything I can or should consider concerning SafeSport's
15 decision on the Lopez brothers? Is there any legal
16 significance whatsoever to any of the things we're discussing
17 here?

18 MR. HUDSON: The actual decision itself?

19 THE COURT: The actual to, was it suspend or --
20 sorry. Pardon?

21 UNIDENTIFIED SPEAKER: Lifetime ban.

22 THE COURT: Yeah, to ban, the actual decision to
23 ban the Lopez brothers by SafeSport, does that have any legal
24 impact on what we're doing?

25 MR. HUDSON: Well, I think it's more -- I think

1 it's complicated and this is part of why we have a
2 conditional motion. That's half of the picture.

3 The interesting thing about this case is we are
4 literally living the case. Every day the facts are changing.
5 That's why we need to keep amending, is -- this is not like
6 your typical car wreck where it happened three years ago.

7 THE COURT: No, I understand that, but you do
8 understand that from a Court's perspective at some point
9 we've got to freeze things and make a decision or else --

10 MR. HUDSON: You do.

11 THE COURT: -- there is no end to the case.

12 MR. HUDSON: Certainly, and I suppose I'm giving
13 you an answer, I don't think you like it, but that's part of
14 why we have a conditional motion for leave.

15 THE COURT: Well, I mean, we deal with this all the
16 time and something I wanted to raise. Very frequently,
17 especially in a qualified immunity context, we have a motion
18 to dismiss, a request for amended complaint. We're not blind
19 to that amended complaint. The allegations are there because
20 it's -- the proposed complaint has been filed. We see under
21 that proposed amended complaint you probably have made it,
22 but under the current complaint you don't. And often that
23 results in a withdrawal of the pending motion, a granting of
24 the pending motion to dismiss, a granting of the amended
25 complaint and then a whole new round. I don't want to do

1 that here obviously, so but that does happen.

2 MR. HUDSON: And to be clear, it's a conditional
3 motion.

4 THE COURT: Understood.

5 MR. HUDSON: We don't think you need to either, and
6 that's the whole point is we think that we have --

7 THE COURT: No, I'm going to consider only the
8 second amended complaint in this whole analysis and the
9 briefing around that.

10 MR. HUDSON: Thank you.

11 THE COURT: All right. More than five minutes do
12 you think left or we at the tail end of everything? After
13 Mr. Connelly, is there going to be anything else we need to
14 discuss?

15 UNIDENTIFIED SPEAKER: There is one brief matter,
16 Your Honor.

17 THE COURT: Okay, if everything -- well, we have a
18 courtroom deputy, maybe some of you guys, do you want to take
19 very short break or not?

20 UNIDENTIFIED SPEAKER: Your Honor's discretion.

21 THE COURT: I'm good. Let's just plug through,
22 okay. Go ahead.

23 MR. CONNELLY: Your Honor, a few points to reply.
24 First of all, the only relevant date for SafeSport is March
25 of 2017. Obviously --

1 THE COURT: Well, what about your allegation that
2 it was actually '15?

3 MR. CONNELLY: Well, the organization was obviously
4 articles of incorporation and talking about getting off the
5 ground, but SafeSport undisputed, and it's in their own
6 complaint and they quote it, had no power to take any action
7 against anybody until March 3 of 2017.

8 THE COURT: Okay.

9 MR. CONNELLY: That's when SafeSport opened its
10 doors to receive complaints. Before that SafeSport could not
11 have banned or investigated or done anything for anybody. So
12 this idea that March 2015 -- I hope there is a concession on
13 that because that's out of line. March 2017 is the first
14 time in their own complaint that SafeSport could have done
15 anything.

16 Now, if they want to say that USOC offloaded things
17 or other defendants, but March 3, 2017 is the relevant date.

18 THE COURT: Yeah, they don't really say that. All
19 they do is have a block quote from a hearing that states the
20 Center was not launched until March 3, 2017, but I
21 wouldn't -- is that an allegation?

22 MR. HUDSON: No. I'm focusing on the very --
23 pardon me. I'm focusing on the very last section. This is a
24 quote from Mr. Blackman where he says, Once the Center was
25 created as a legal entity in 2015, the Center's independent

1 board of directors had to be populated. Had its first
2 meeting in January of 2016. That's what -- that's who I'm
3 referring to.

4 THE COURT: I don't think it -- I'm not sure it
5 makes any legal significance, but go ahead.

6 MR. CONNELLY: Well, just in terms of the Center
7 could not have taken any action against anybody and, in fact,
8 did not take any action against anybody.

9 THE COURT: Well, I know you've got to have people
10 in order to take action.

11 MR. CONNELLY: Right, and you have to come up with
12 rules and standards and you have to have articles of
13 incorporation, you have to do -- you have to get empowered.
14 And the first time the Center was empowered to take action
15 was effective March 3, 2017.

16 Second, there -- they fundamentally misunderstand,
17 and this is something that it's agreed that the Court can
18 look at, and they agreed that Document 105-1 is promptly
19 before this Court because they refer to the SafeSport
20 procedures in their complaint, and they've agreed in their
21 opposition to motion to dismiss, the 105-1 is promptly part
22 of the record the Court can consider.

23 Your Honor asked me about where in 105-1 are the
24 arbitration proceedings. 105-1 at page 31, SafeSport Rule 24
25 is particularly relevant and SafeSport Rule 27 governs the

1 contents of arbitration hearings. Their notion, and it's
2 fundamentally misguided, is that SafeSport imposed a
3 decision, true, lifetime ban, that's in their complaint, in
4 April of 2018. No dispute, lifetime ban of Jean Lopez. They
5 say, But why on appeal would you need our testimony to defend
6 your ban? Why on, quote, appeal? Now, I know something
7 about appeals. This is not an appeal. If you look at Rule
8 24 --

9 THE COURT: I understand. An arbitration is not an
10 appeal.

11 MR. CONNELLY: Yeah, and Rule 24 talks about the
12 burden of proof and the arbitrators have to find by a de novo
13 review has it been proven by preponderance.

14 So what's in the complaint -- and the only dispute
15 is one of timing -- the complaint says, undisputed April 2018
16 lifetime ban of Jean Lopez. Complainant says we're thrilled
17 with that ban, we finally feel vindicated, you know, all
18 plaintiffs, and each one of them in individual paragraphs
19 say, finally vindicated, a lifetime ban, our claims have been
20 vindicated.

21 Then the complaint goes on, but in August 2018 the
22 Center abandoned that stay. We abandoned, they abandoned us,
23 our individual plaintiffs, on appeal solely because we
24 wouldn't provide testimony. That's what we've done. That's
25 the alleged criminal act for Counts 14 and 15. That's the

1 alleged outrageous act for 21. That's the grossly negligent
2 act for 20, and that's the negligent act for Number 19. That
3 is -- and by the way, this is -- our argument is one of
4 absolute immunity. It's not that, you know, a quasi
5 judicial, quasi prosecutorial, it can't be that you acted
6 unreasonably. That's not a claim that is allowed to proceed
7 under the Tenth Circuit case law.

8 So we would ask the Court to look at only the
9 complaint, if it wants to, or their conditional amendment,
10 which I think is undisputed, that there are three dates
11 really: April lifetime ban; August, try to stay that ban;
12 December hearing this year and to January decision. That ban
13 was overturned because we did not have that testimony.

14 Now, maybe -- you know, I don't know if their
15 position is you can't look at the January arbitration
16 decision. If that's the case, it still doesn't make a
17 difference because the alleged act, the alleged outrageous
18 act, the alleged act that gives rise to treble damages under
19 RICO and tort damages under Colorado law is the decision to
20 try to stay that proceeding because we don't have their
21 testimony because we're worried that that ban may not be
22 upheld.

23 That's not obstruction, that's not a RICO
24 violation. The Center is not a federal criminal and it's not
25 subject to a state tort liability. We ask for dismissal.

1 THE COURT: Understood, thank you. All right.

2 What else? Pick any order.

3 UNIDENTIFIED SPEAKER: (inaudible) must be heard,
4 Your Honor.

5 THE COURT: Yes.

6 MR. WALSH: I just want to respond quickly, Your
7 Honor, and cover some of the, I guess basis for the negligent
8 claims, at least. I know we've talked about obstruction in
9 RICO, but frankly, it breaks my heart that SafeSport is a
10 party to these proceedings. You know, we didn't originally
11 include them in a complaint, but they have to be a part of
12 this complaint. And it's terribly unfortunate. I know there
13 are people with good intentions, but the fact of the matter
14 is, and as we plead, SafeSport was set up to fail, and they
15 are recklessly adhering to a set of rules and a procedure and
16 a broken process. And this reckless adherence to these
17 policies has injured our plaintiffs.

18 THE COURT: Reckless adherence to what kind of
19 policy?

20 MR. CONNELLY: Your Honor, frankly, this is
21 surrebuttal and sur-reply. We have not done this before.

22 THE COURT: Anything new you can respond to. Go
23 ahead.

24 MR. WALSH: Well, let me first say that the -- as
25 we cover in the briefing, the immunity argument is belied by

1 statute. The standing argument is belied by our injuries. I
2 think that these are covered in the briefs and in the
3 allegations.

4 As far as sufficiency, had my finger in a couple of
5 places that I just wanted to point to. These are included in
6 the pleadings and the motions, exhibits. Among SafeSport's
7 policies are -- and I'm sure that my colleague can correct me
8 if I'm calling this the wrong thing, but Rule 27 of state's
9 courts own policies says that the -- talks about the role of
10 the reporting party.

11 In the -- in the Jean Lopez investigation, the
12 reporting parties are the plaintiffs. In the Steven Lopez
13 investigation, the reporting party was not a named plaintiff
14 in this case. But as far as the Jean Lopez investigation
15 with our clients as reporting parties, the rule says, in
16 arbitrations requested by the responding party, who is Jean
17 Lopez, the reporting party is not a party, but has the right
18 to be present during the hearing and give testimony as a
19 witness if called, but shall not otherwise participate in the
20 hearing.

21 I think this is just one example that SafeSport
22 adheres to some policies that were drafted by largely USOC
23 employees.

24 THE COURT: Tell me what's wrong with that. I
25 think as you read it, they have a right, which means a right,

1 they can. Nobody can stop them from participating as a
2 witness.

3 MR. WALSH: And in the arbitration, but they are
4 not required to be there. They are not -- in other words,
5 SafeSport --

6 THE COURT: So you think the policy would be better
7 if a person who didn't want to go public any more than they
8 have, who never wanted to think about this again, who never
9 wanted to talk about this again, it would be a better policy
10 for SafeSport to force them to do that under -- under penalty
11 of some kind of sanction or --

12 MR. WALSH: I don't think that would be a better
13 policy. I don't know what would be a better policy, but I do
14 believe that the policy that was followed in this case didn't
15 work. The policy that was followed in this case had our
16 clients cooperating in an investigation, giving information
17 to the investigators, providing SafeSport with essentially a
18 case file against the Lopez brothers, SafeSport coming to a
19 decision based on that evidence.

20 THE COURT: A decision I assume you agree with?

21 MR. WALSH: Yes.

22 THE COURT: Lifetime -- they couldn't have done
23 anything more than a lifetime ban. That's the heaviest
24 hammer that they had, right?

25 MR. WALSH: Right, recommending lifetime bans for

1 both. And then the process is that --

2 THE COURT: Well, not recommending, imposing.

3 MR. WALSH: Imposing lifetime ban. Revoking their
4 membership in Taekwondo. And permanent ineligibility to
5 participate in sport.

6 THE COURT: Right.

7 MR. WALSH: And on notice of appeal, for lack of a
8 better word, the responding party has an opportunity to
9 request rehearing of that decision. SafeSport walks into an
10 arbitration that is a full evidentiary arbitration with
11 nothing more than the director's decision and the
12 investigator who talked with our clients.

13 THE COURT: So you think they withheld evidence?

14 MS. WALSH: I don't think -- I don't know. I don't
15 think they withheld evidence, but the procedures they
16 followed, they came into an arbitration with an unloaded gun.
17 Someone made that analogy and it seems apt to me. Like the
18 process was set up to fail and it did and it resulted in the
19 director's decision, which imposed a lifetime ban, being
20 vacated for both of these individuals. And the kind of
21 reckless adherence to this policy is negligent, it's grossly
22 negligent and has harmed our clients.

23 THE COURT: Go ahead, briefly.

24 MR. CONNELLY: Very briefly. The arguments here
25 are really arguments that are addressed -- and we say in our

1 brief -- to the Article I legislature. And they cite this
2 legislative oversight. If they don't like the process -- and
3 I really heard nothing from my learned opponent here that
4 said was wrong with the process. They have the right, the
5 not the requirement to participate. If they don't
6 participate, the rules made clear that the Center -- that the
7 arbitrators can consider hearsay evidence, but give it what
8 weight they want to give it.

9 That's exactly why when they told us we're not
10 going to participate, the decision that's challenged in the
11 second amended complaint, why we said we're going to stay
12 these proceedings, timeout. We don't want to go forward with
13 an unloaded gun.

14 We would like -- and I don't like a gun metaphor,
15 but we would like bullets in their loaded gun. I really
16 don't like gun metaphors, but if that's the metaphor that has
17 been used --

18 THE COURT: So, again, I know this is not going to
19 be part of the decision, but in the event that the case goes
20 forward, discovery is engaged in and you do receive, somebody
21 receives sworn testimony that would certainly support a
22 lifetime ban, does SafeSport have a right to go back in --

23 MR. CONNELLY: It's too late to undue the rules,
24 the arbitrators' decision is final. That's why we didn't
25 want to go forward. That's exactly why -- and the decision

1 is challenged in the second amended complaint, August of
2 2018, we said timeout, we don't want to go forward with
3 our -- again, I don't like the metaphor, unloaded gun.

4 THE COURT: But you could have -- you could not
5 have withdrawn the ban prior to the arbitration?

6 MR. CONNELLY: Well, we tried to stay the ban.

7 THE COURT: No, no, but could you have withdrawn it
8 and mooted any arbitration?

9 MR. CONNELLY: Well, no, and actually -- again,
10 this is -- again, it's in the arbitrators' decision. This
11 was hashed out between the arbitrators. If we withdrew the
12 ban, it would have been with prejudice. There was a risk of
13 it being withdrawn with prejudice. You can't just, you know,
14 stop and start. And we're being accused of trying to stay an
15 arbitration and stay a ban and we were unsuccessful in that.
16 That's the irony of this, and you know now --

17 THE COURT: So it's kind of like jeopardy had
18 attached.

19 MR. CONNELLY: Jeopardy had attached. And we're
20 really in a no-win situation. And if the -- if the policies
21 are not as they should be, and people can argue that, and
22 they have legislative arguments, Congress is looking at the
23 Center. There is a lot of oversight here. The Center was
24 created less than -- you know, the SafeSport Act is now less
25 than a year old. Federal oversight is vigorous and

1 continuing and they cite that. And that's the part. They're
2 not private attorney generals entitled to reform and ask this
3 Court to reform the Center. They're damages claims. Bring
4 the damages claim.

5 And Congress -- you know, their broad remedies is
6 not to hold the Center liable for damages in this one case
7 and countless others if this goes forward, is go to Congress.
8 Congress is doing its job, but not everything, but certainly
9 in oversight of the Center, there is no lack of effort going
10 on. So we ask the Court to dismiss the complaint.

11 THE COURT: I'll take judicial notice. That was an
12 overstatement. Okay. Anything other than argument on the
13 motion to dismiss?

14 MR. LIPMAN: One matter, Your Honor.

15 THE COURT: Go ahead.

16 MR. LIPMAN: And I'll try to be brief. But, Your
17 Honor, this has to do with the scheduling order. We've
18 conferred with counsel and there is opposition. The amended
19 scheduling order, Your Honor, was entered September 6, 2018.
20 It's Document 75. And it sets our deadline for class
21 certification motion with all supporting evidence, including
22 expert disclosures, for June 3, which is coming really fast.

23 Your Honor, I am going to move for a six-months'
24 extension of that deadline and I submit that there is good
25 cause to do so, part of which is our diligence done, is the

1 plaintiff's diligence in seeking the discovery necessary to
2 meet that deadline, but nevertheless, despite our diligent
3 efforts, have not been able to get evidence required for
4 not -- or owed to us frankly. And I'm not going to get into
5 a big discovery dispute because I understand that's for a
6 Special Master.

7 THE COURT: Right.

8 MR. LIPMAN: But this scheduling order was issued
9 September 6. By September 17 we issued significant written
10 discovery, and this is primarily focused on United States
11 Olympic Committee, including 22 requests, which we think
12 contain a lot of the discovery and written ESI and documents
13 that we need to meet this -- to meet our burden on the June 3
14 deadline.

15 So to date it's our feeling that four of those 22
16 requests have been responded to and we're still waiting on
17 documents on the others. And I'm not going to try to
18 litigate this discovery dispute in front of Your Honor, but
19 I'm getting into it to demonstrate that we were very diligent
20 in trying to get this information.

21 We scheduled seven or eight depositions immediately
22 after we issued the discovery; namely, USOC board members,
23 the Investigator Alberstein, another investigator USOC board
24 chair, former CEO. We've -- so six, seven or eight
25 depositions, all -- including the Lopez brothers, all of

1 which have had to be rescheduled and cancelled, Your Honor,
2 because we don't have the documents that we need to use
3 during the depositions.

4 We're told -- we have no ESI, zero, at this point.
5 We're told that there will be some ESI produced to us on
6 January 31. I'll take it up with the Special Master, but we
7 have our doubts given the custodians, that there are only
8 seven of them that they're searching when they have -- we
9 know that they have mirrored over 100 custodians, I guess,
10 accounts or computer files. I'm not sure the right word. We
11 have concerns that that will be insufficient. We're going to
12 have to hash that out with the Special Master, Your Honor.

13 So we don't have any ESI at this point. We're
14 missing a lot of documents. We have had to reschedule all
15 these depositions. We -- in addition to the depositions that
16 we scheduled diligently, there are additional depositions
17 that still need to be scheduled. And so one of the issues
18 is, Your Honor, of the ESI custodians that they're actually
19 getting the ESI from, only one of them we think has documents
20 from the pertinent time period, so we're going to have to
21 fight that there are going to be more custodians. And again,
22 I'll take that up with a Special Master.

23 But frankly, Your Honor, we're just not able to
24 meet this June deadline, and I don't want to wait -- you
25 know, where it's apparent to us that the deadline is

1 unworkable at this point, we don't want to wait until a later
2 date when it becomes more and more unworkable to bring it to
3 your attention.

4 So, Your Honor, we request that the June 3, 2019
5 class certification motion with accompanying evidence,
6 including expert reports, be moved six months to December 3,
7 Your Honor.

8 THE COURT: Okay. So let me address a couple of
9 facts of life before I take any responses. This
10 recommendation -- the motions are very complex. This a very
11 complex case, novel areas of law, not a lot of precedent as
12 you have all recognized. I want to get it right the first
13 time, so that just takes time, and we've been working on this
14 since the first brief came in, and this has been helpful
15 today.

16 I would hope for a decision by roughly
17 mid-February. If that were the case, there is 14 days to
18 object, which in this situation is inevitable, and then I
19 think another 14 to respond to objections. So a month later
20 the matter will be fully briefed in front of Judge Arguello.

21 Best of all worlds, you know, a month for her to
22 consider everything and get out an opinion that's going to be
23 very important to her too because she likes to get things
24 right, but more likely you would have a final decision on the
25 motion to dismiss maybe mid-May or first of June. That's the

1 most likely scenario.

2 So given the fact that you may not have a decision
3 on the motions to dismiss until June, does that impact your
4 response to what Mr. Lipman just said? And keep in mind, of
5 course, that it's the plaintiff who argued for this date.
6 The defendants actually argued for a later date for
7 disclosure, but I accommodated your desire to put this on a
8 fast track. I know you're now saying that that has been
9 thwarted, but anyway, they initially argued for a later date
10 for those disclosures anyway.

11 So with all that in mind, if anybody wants to
12 respond. I'm not inclined to set a date today because I just
13 don't like to set dates that are bad, you know, and I can't
14 say December is a good time and I can't say July is a good
15 time.

16 I can say that it's -- it's a rare case, and this
17 won't be one of them, in which a very complex piece of
18 litigation doesn't receive some extension of those kinds of
19 deadlines. So I can commit to you that if I'm -- if I
20 believe in good faith that you've diligently tried to obtain
21 documents, but through no fault of yours and maybe even no
22 fault of theirs that it hasn't occurred and an expert doesn't
23 have what they absolutely need, in this important of a case,
24 you'll get an extension so you can relax about that, but I'm
25 not inclined to actually set a new date based on some limited

1 information and prematurely.

2 So my inclination would be to say, yeah, hold that
3 card, we'll play it later, but anybody can respond.

4 MR. WALSH: Thank you.

5 MS. BARNHART: Thank you, Your Honor. Lindsey
6 Barnhart for USOC. USOC does not oppose taking the date off
7 the calendar for now and working out a new date at the
8 appropriate time, but just a couple of points. Right away I
9 think we would want to be clear that the -- however the
10 motion -- however the order comes out in a few months that
11 discovery would be cabined based on what's left if anything
12 in the complaint, as far as the scope of the claims.

13 And then secondly, I think, you know, opposing
14 counsel said he didn't want to litigate the issue now and
15 then proceeded to litigate issue. So I just wanted to make a
16 couple of notes about some of the things that he said. You
17 know, any -- any insinuation that USOC was at fault for
18 delaying discovery in this case is completely unfounded. We
19 responded to the RFPs on time, we followed the procedures
20 that were lined up in the ESI protocol to which everybody
21 agreed. We proposed custodians, we proposed search terms,
22 and we received silence from the plaintiffs.

23 So any -- any statement now that there is an
24 objection to the custodians, that there is an objection to
25 the timing of all of this, it's -- frankly it's on them, and

1 we did our best to meet and confer under the terms that
2 everybody agreed to, and we ended up finally pushing this
3 forward, and, you know, we sorted everything out amongst
4 ourselves. So there is no dispute here, but, you know, the
5 implication that USOC is at fault here is not well taken.

6 THE COURT: You've made your record, and it won't
7 impact -- it hasn't impacted anything I've said, but I -- you
8 know, you have a right to respond.

9 MS. BARNHART: Thank you.

10 THE COURT: Very good. So is it okay to vacate
11 that date, but not set another one? Anybody have an
12 objection to that? And set another one, what we would
13 probably do is your meeting with Ms. Grossman as needed and I
14 can also then have maybe every 45 days, every two months,
15 every two and a half months, every three months, a regularly
16 scheduled status conference just so I -- you can get on the
17 calendar to address anything you need to address. I'll take
18 suggestions as to that. Also please think about whether you
19 would like to stay briefing on the motion to conditionally
20 amend, whether it makes sense that that be briefed in a
21 context that we just have no idea whether that would ever
22 ripen or not.

23 So since you are the responding parties, let's take
24 that issue first. Do you guys want to stay the briefing on
25 Docket 196?

1 MR. KAMIN: The USOC has already opposed it and
2 moved to strike it and to have it dismissed. So we would --
3 I mean, I'm fighting for others who haven't responded yet,
4 have an opportunity --

5 THE COURT: You raise a good point. To the extent
6 you wanted me to know something, it's known. So is there any
7 strenuous objection to denial without prejudice and -- so
8 what typically happens in a case like this is we don't have
9 that kind of motion pending, but we issue -- it often comes
10 up in pro se litigation, but it can come up here too.

11 We issue a ruling, actually a recommendation, where
12 we believe that certain deficiencies could be easily cured.
13 So in the recommendation we recommend dismissal; however, we
14 recommend the district court permit a motion to amend
15 addressing the issues we -- we discuss in the recommendation
16 within 30 days.

17 So to the extent that you -- that you wanted to
18 notify me that's something you would want to do, you've
19 been -- the notification has occurred and I'm just inclined
20 to deny without prejudice 196.

21 MR. HUDSON: Yes, Your Honor, that's exactly --
22 that's exactly the concern that we had is the Tenth Circuit
23 law is pretty clear that if a plaintiff doesn't move -- I
24 mean, your Court is more generous than other Courts in the
25 Tenth Circuit. It's pretty common to just get poured out,

1 and then if you didn't have a pending motion to leave, you
2 don't get to replead and so --

3 THE COURT: We sua sponte all the time recommend
4 leave --

5 MR. HUDSON: That's fine. As long as it's without
6 prejudice.

7 THE COURT: All right. Then Docket Number 196 is
8 denied without prejudice. So no further briefing necessary
9 on that.

10 Now, with regard to simply leaving -- I guess if
11 you're going to -- if you're going to leave expert deadlines
12 uncertain, every other deadline is contingent on that one, so
13 it would be essentially to vacate the deadlines in this case
14 with the proviso that I will keep a tab on this, and not in
15 that language, but you also have to be sort of private
16 attorneys general on that sense, and you've got -- you have
17 to bring to my attention any urgency that you feel and any
18 deadline that needs to be set.

19 So we have a dual obligation here. My obligation
20 is to make sure this case is tried in the general sense under
21 Rule 1, but in a specific sense within three years because of
22 the mandate from Congress under the Civil Justice Reform Act.

23 So -- and I take that seriously and it's a rare
24 case that -- that goes beyond that three-year period as it's
25 calculated, and the calculation is complicated, but if it was

1 filed in April of 2018, which I think I've heard, then it
2 becomes stale September 30 of 2021. And my job would be that
3 it's tried before that date. That's a last resort, but the
4 first mandate is to make sure that it's tried in an
5 efficient, timely and inexpensive manner, okay.

6 So any objection to vacating deadlines at the
7 moment?

8 MR. KAMIN: My only concern with it, Your Honor, is
9 that I'm not aware as we sit here of all the deadlines we
10 have. I think if we have an opportunity to review the
11 scheduling order and submit something to Your Honor in a very
12 short order.

13 THE COURT: That would be fine.

14 MR. KAMIN: We may not object to that, but this was
15 just brought up.

16 THE COURT: I don't mind that at all. Do you think
17 you could come to some kind of stipulated order?

18 MR. KAMIN: Yes, we'll work with the plaintiffs.

19 THE COURT: Then do that.

20 MR. HUDSON: I don't know that we can come to a
21 stipulation.

22 THE COURT: Well, you'll have to try. I don't mind
23 giving that a try.

24 MR. HUDSON: Oh, okay. The parties can agree on
25 nothing.

1 THE COURT: They've heard everything you've said
2 today and they still think they can, so they're optimists.

3 MR. QUINN: I think the only thing I would add to
4 this is that we do have -- as you've suggested, periodic, not
5 to exceed ten-week reconvening with you so this doesn't drift
6 for a period of time because that's what will happen. If we
7 vacate the dates, you know, we start to drift right off the
8 bat.

9 THE COURT: Understood. So given the fact that
10 it's late-ish January and you said June 1 -- June 3.

11 MR. HUDSON: June 3 is the current deadline.

12 THE COURT: Right. So let's go halfway between
13 those. That's approximately -- we're approximately at
14 February, March, April, late June. So we're talking about
15 April 1-ish. So it just so happens that the week before that
16 is better for me. I'm proposing March 25 starting at 10:30.
17 Anybody wants to appear by phone can certainly do that. I've
18 seen you all face-to-face, I'll know who you are, and that
19 can be in person and/or by phone.

20 Is that date okay?

21 UNIDENTIFIED SPEAKER: (Inaudible).

22 THE COURT: All right. So that will be the next
23 date. Therefore, if you can in the next week come up with a
24 proposed stipulation on deadlines, even if that stipulation
25 is we don't see any way around just vacating at the moment

1 and setting these at a later date, that's fine. If you
2 actually want, if you actually desire to get some dates on
3 the record and you can all agree, I'll go ahead and bless
4 that too, okay, because I do like -- I do like you to be
5 responsive to your clients' needs, and I also like you to be
6 in charge of this case, and I am inserted only on as-needed
7 basis, so if you can come up with that that everybody agrees,
8 then I'm assuming that your job as zealous advocates for your
9 client and I'll bless it, okay.

10 Anything further from the plaintiffs?

11 MR. HUDSON: Nothing, Your Honor.

12 THE COURT: Anything at all from the defense?

13 Okay, thank you all for your appearance today. Excellent
14 job. Look forward to working with you further. Okay, we'll
15 be in recess.

16 (Whereupon, the within hearing was then in
17 conclusion at 4:35 p.m.)

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1 I certify that the foregoing is a correct transcript to the
2 best of my ability to hear and understand the audio recording
3 and based on the quality of the audio recording from the
4 above-entitled matter.

5

6 /s/ Dyann Labo

January 28, 2019

7 Signature of Transcriber

Date

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